FILE COPY

Office - Supreme Court, U. S.
FILED
DEC 13 1937
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1937.

No. 256.

STATE OF INDIANA on the Relation of
DOROTHY ANDERSON,
Petitioner,

vs.

HARRY BRAND, Trustee of CHESTER SCHOOL TOWNSHIP OF WABASH COUNTY, INDIANA.

PETITIONER'S BRIEF.

FRANKLIN W. PLUMMER,
Wabash, Indiana,
HOWARD E. PLUMMER,
Wabash, Indiana,
CHARLES M. EGGLESTON,
Terre Haute, Indiana,
DENVER HARLAN,
Richmond, Indiana,
PAUL R. SHAFER,
801 Sycamore Bldg.,
Terre Haute, Indiana,
THOMAS F. O'MARA,
315 Grand Bldg.,
Terre Haute, Indiana,
Counsel for Petitioner.

St. Louis Law Printing Co., 415 North Eighth Street. CEntral 6477.

INDEX.

	Page
Opinions of the Court	1
Statement of the case	2
(a) The petitioner's complaint	4
(b) The issues in the State Supreme Court	5
(c) Statutes involved or related	7
(d) No question of the propriety of mandamus as the proper remedy was made below	9
Specifications of error	11
Summary of argument	13
A. The construction of the statute involved	13
B. The construction of the State Supreme Court not conclusive in this court	24
C. Contracts of states and those executed pursuant to statutes are within the protection of the contract clause	24
D. The contract clause and the police power	26
Argument	29
Appendix A—Chapter III, Section 1 and Section 2, page 173, of Acts of the General Assembly of Indiana of 1899	57
Appendix B—Chapter 91, Sec. 1, p. 195, of the Acts of General Assembly of Indiana 1921	58
Appendix C—Indiana Teachers' Tenure Act 1927—Indiana Acts 1927	59

Appendix D—Indiana Teachers' Tenure Act 1933—Indiana Acts 1933, p. 716 64

Appendix E—Teachers' Minimum Wage Act, Chapter 56, Acts of 1920, Special Session, p. 194 69

Appendix F—The New Jersey Act (as quoted in Phelps v. Board of Education of Town of West New York, 57 Sup. Ct. Rep. 483) 71

Appendix G—Bibliography of tenure and contractual status of teachers 72

Cases Cited.

Adams v. Tanner (....), 244 U. S. 590, 596 26
Appleby v. City of New York, 271 U. S. 364, 379, 380. 24
Arburn v. Hunt (1934), 207 Ind. 61 (191 N. E. 148, 149) 17
Barnes v. Mendenhall, 98 Ind. App. 229 (183 N. E. 556) 18
Board of Trustees v. State (1911), 175 Ind. 147 (93 N. E. 851) 9
Brumfield v. State ex rel. Wallace (1934), 206 Ind. 647 (190 N. E. 863, 867) 9, 18, 30
Cain v. Staley Mfg. Co. (1935), 97 Ind. App. 235 (180 N. E. 265) 15
Carondelet Canal & Nav. Co. v. Louisiana (1914), 233 U. S. 362, 378 25
Charlestown School Tp. v. Hays, 74 Ind. 127 17
Cheney v. State (1905), 165 Ind. 121 (74 N. E. 892) .. 15
Cincinnati Exhibition Co. v. Marsans (1914), District Court of Missouri, E. D., 216 Fed. 269 20
City of Owensboro v. Cumberland Telephone & Telegraph Co. (1913), 230 U. S. 27 ..... 26, 52

Commissioner of Immigration v. Gottlieb et al. (1923), 265 U. S. 310, 313 (68 Law. ed. 1031, 1033)..... 15
Connell v. State ex rel. Thompson (1925), 196 Ind. 421 (144 N. E. 882).....19, 35
Coombes v. Getz, 285 U. S. 434, 441.....24, 25, 41
Crittenberger v. State Savings & Trust Co. (1920), 127 N. E. 522 16
Davis v. Davis, Director (1926), 197 Ind. 386 (151 N. E. 134) 18
Dodge v. Board of Education (Nov. 8, 1937), 82 Law. ed. 77, 79.....21, 30
Douglass v. Pike County (1879), 101 U. S. 679-686 (25 L. ed. 968).....23, 24
Farmers Handy Wagon Co. v. Newcomb (1916), 192 Mich. 634 (15 N. W. 152).....20, 37
Fechheimer v. Washington (1881), 77 Ind. 366..... 19
Fessler v. Bosson (1920), 189 Ind. 484 (128 N. E. 145). 15
Franklin Tel. Co. v. Harrison (1892), 145 U. S. 259.. 20
Grand Trunk Western Railroad Co. v. South Bend (....). 227 U. S. 544, 555.....26, 27, 48, 52
Gregg School Tp. v. Hinshaw, 76 App. 503 (132 N. E. 586) 17
Gurfein v. Werbelovsky (1922), 97 Conn. 703 (118 Atl. 32) 20, 37
Hall v. Wisconsin, 103 U. S. 5, 10, 11.....25, 39, 47
Harrison School Tp. v. McGregor, 96 Ind. 185..... 17
Henry School Tp. v. Meredith, 32 App. 607 (70 N. E. 393) 17
Home Bldg. & L. Asso. v. Blaisdell, 290 U. S., page 433 45
Hutton v. Gill (1937), 8 N. E. (2d) 818 (Ind. Sup. Ct.) 22, 40
Hyand v. Rochelle (1913), 179 Ind. 671 (100 N. E. 842) 15

Jefferson College v. Washington & Jefferson College, 23 Wall. 190, 20 Law ed. 550 23
J. Wooley Coal Co. v. Tevault (1918), 187 Ind. 171 (119 N. E. 485) 16
Kiefer v. Troy School Tp., 102 Ind. 279 17
Kostanzer v. State ex rel. Ramsey (1933), 187 N. E. 392, 205 Ind. 536 ..... 9, 17, 18, 34
Long Island Supply Co. v. Brooklyn Trust & Guaranty Co., 166 U. S. 685, 690, 691; 41 Law. ed. 1165, commenting on Hall v. Wisconsin 23, 25, 47
Maddox Motor Car Co. v. Ford Motor Car Co. (Tex. 1930), 23 S. W. (2d) 338 20
McCall v. Wright (1910), 198 N. W. 143 (91 N. E. 516), 31 L. R. A. N. S. 249 20
Merchants Life Ins. Co. v. Griswold (Tex. Court of Civil Appeals) (1919), 212 S. W. 807 37
Morrison v. McFarland, 51 Ind. 206 17
Muhlker v. New York etc. R. Co. (1905), 197 U. S. 570, 25 S. Ct. 522 (49 L. ed. 872) 23
New Jersey v. Yard, 95 U. S. 110, 114 24
New York Electric Lines Co. v. Empire City Subway, 235 U. S. 179 23
Ohio Public Service Co. v. State of Ohio ex rel. Fritz (1926), 274 U. S. 12, 14 (71 Law ed. 898, 901) 23
Orbach v. Paramount Pictures Corp. (1919), 23 Mass. 281 (103 N. E. 669) 20
Over v. Byram Foundry Co. (1906), 37 Ind. App. 452, 455 ..... 22, 35
Panhandle Eastern Pipe Line Co. v. State Highway Commissioners, 294 U. S. 613, 622 ..... 28, 43, 46
Peabody Alwert Coal Co. v. Yandell (1913), 179 Ind. 222 (100 N. E. 758) 15
Phelps v. Board of Education of the Town of West New York, 57 S. Ct. 483, ... 8, 21, 24, 32

Philadelphia Ball Club v. Lajoie (1902), 202 Pa. 210, 51 Atlantic 973 ..... 20, 36
Pilkington and others v. Scott and others (1846), Eng. Exchequer, 15 M., etc., W. 655 ..... 20, 36
Pittsburgh C. C. & St. L. Ry. Co. v. Parker (1922), 191 Ind. 868 (134 N. E. 890) 16
Ratcliffe v. Dick Johnson School Twp. (1933), 204 Ind. 525 (185 N. E. 143) 17
Rinaldo v. Dreyer (1936), 1 N. E. (2d) 37 27
Sauer v. New York (1907), 206 U. S. 536, 27 S. Ct. 686 (51 L. Ed. 1176) 23
School City of Elwood v. State ex rel. Griffin (1932), 203 Ind. 626, 634 (180 N. E. 471, 473) 9, 17, 18, 31
School City of Evansville v. Culver, 94 Ind. App. 692 (182 N. E. 270) 18
School City of Lafayette v. Bloom, 17 App. 461 17
School Town of Carthage v. Gray, 10 App. 428 (37 N. E. 1059) 17
School Town of Milford v. Zeigler, 1 App. 138 17
Schwier v. Zitike, 136 Ind. 210 17
Southern Railroad Co. v. Howerton (1914), 182 Ind. 208 (106 N. E. 369) 19
Sparta School Tp. v. Menell, 138 Ind. 188 (37 N. E. 1059) 17
State ex rel. Black v. Board of School Comrs., 205 Ind. 582 (187 N. E. 392) 18
State ex rel. City of Marion v. Marion Light & Heating Co. (1910), 174 Ind. 622 (92 N. E. 731) 9
State ex rel. Clark v. Stout, 206 Ind. 58 (187 N. E. 267) 18
Stiver v. State ex rel. Kent (1936), 1 N. E. (2d) 1006, 1008 27
Stone v. Mississippi, 101 U. S. 814, 25 Law ed. 1079 .. 23
Sturges v. Crownshield, 4 Wheat. 122, 128 ..... 28, 54

Thomas v. Anthony (1916), 30 Cal. App. 217 (157 Pac. 823) 20
Tidal Oil Company v. Flanagan, 263 U. S. 444, 451... 24
Tipton County v. Rogers Locomotive & Mach. Works, 103 U. S. 523 23
Titus v. Scantling (1935), 4 Blackford 89 19
Treigle v. Acme Homestead Assoc. (1936), 297 U. S. 189, 196 (80 L. ed. 575-580) 26, 28, 43
United States v. Missouri Pac. Ry. Co. (1928), 278 U. S. 269, 277, 278, 73 Law. ed. 322, 376 15
United States v. Standard Brewery, Inc. (1919), 251 U. S. 210, 217, 64 Law. ed. 229, 234 15
United States v. Thompson (1927), 246 U. S. 457, 551 (62 Law. ed. 876, 879) 16
Velie Motor Car Co. v. Ford Motor Car Co. (1912), C. C. A. 71, 94 Fed. 324 20
Waltz School Tp. v. Derck, 74 App. 700 (29 N. E. 414) 17
W. B. Worthen v. Thomas, 292 U. S. 426, 431, 432. 26, 28, 54
Woodruff v. Trapnall, 10 How. 190, 196 25
Worthen Co. ex rel. v. Kavanaugh (1935), 295 U. S. 56, 60, 55 S. Ct. 555 (79 L. Ed. 1298) 23, 24, 26, 44
Yard v. New Jersey, 95 U. S. 110, 114 25

Statutes Cited.

Constitution of the United States, Art. I, Sec. 10 12
New Jersey Act (Teachers' Tenure) 8, 71
Teachers' Minimum Wage Act of 1920 ..... 8, 69
Teachers' Tenure Act of 1873 14
Teachers' Tenure Act of 1899 ..... 7, 13, 57
Teachers' Tenure Act of 1921 ..... 8, 13, 29, 58
Teachers' Tenure Act of 1927. 2, 3, 8, 11, 13, 14, 16, 17, 29, 59
Teachers' Tenure Act of 1933 ..... 3, 8, 12, 64

Miscellaneous.

Bibliography of Tenure and Contractual Status of Teachers 72
Corbin, Arthur L. (34 Yale Law Journal, 371, 386, 387, April, 1925) 20
Holmes, J., in 10 Harvard Law Review 472..... 19
Introduction to the Philosophy of Law (Pound, pp. 237, 272, 273, 274, 275, 276, 279)..... 20
Pollock on Contracts, p. 191 (8th Ed.)..... 20
Selected Readings on the Law of Contracts, Assoc. Am. Law Schools, 434, 448, 450..... 20
Williston on Contracts, Rev. Ed. 1936, pp. 365, 366.. 38

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1937.

No. 256.

STATE OF INDIANA on the Relation of
DOROTHY ANDERSON,
Petitioner,

vs.

HARRY BRAND, Trustee of CHESTER SCHOOL TOWNSHIP OF WABASH COUNTY, INDIANA.

PETITIONER'S BRIEF.

I.

OPINIONS OF THE COURT.

(a) The first majority opinion of the Supreme Court of the State of Indiana is reported in 5 N. E. (2d) 531, Cause No. 26,560 (R. pp. 13, 14 and 15).

(b) The majority opinion of the State Supreme Court rendered upon petitioner's petition for rehearing is reported in 7 N. E. (2d) 777, in the same cause (R. pp. 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27 and 28).

(c) The dissenting opinion of Judge Treanor is reported in 5 N. E. (2d) 913 (R. pp. 31, 32, 33 and 34).

The official reports of these opinions have not yet been published.

II.

STATEMENT OF THE CASE.

On April 16, 1934, petitioner brought an action in mandate in the Wabash Circuit Court in Wabash County, Indiana, against the respondent, Trustee of Chester School Township of Wabash County, Indiana, to compel the respondent to recognize her continuing contract with the school township to teach in the schools thereof in accordance with the provisions of Chapter 97 of the Acts of the General Assembly of Indiana for 1927 (Indiana Acts of 1927, page 259) commonly known as the Teachers' Tenure Act of 1927 and hereinafter referred to by that title or as the Act of 1927 (Appendix B, p. 58, this brief).

This act provided in section 1:

> "Be it enacted by the General Assembly of the State of Indiana, That any person who has served or who shall serve under contract as a teacher in any school corporation in the State of Indiana for five or more successive years, and who shall hereafter enter into a teacher's contract for further service with such corporation, shall thereupon become a permanent teacher of such school corporation. The term 'teacher' as used in this section shall mean and include licensed public school teachers, supervisors and principals of all public school corporations, and licensed assistant superintendents and superintendents of school cities and towns. Upon the expiration of any contract between such school corporation and a permanent teacher, such contract shall be deemed to continue in effect for an indefinite period and shall be known as an indefinite contract. Such an indefinite contract shall remain in force unless succeeded by a new contract signed by both parties or unless it shall be canceled as provided in section 2 of this act: * * *"

Section 6 of this Act of 1927 expressly declared the act to be "supplementary" to an Act of 1921, p. 195, Act 3 of 1921 set out in Appendix B, p. 58, this brief, which expressed all contracts between teachers and school corporations to be in writing.

The controversy arose after the petitioner had taught continuously in the schools of respondent since 1924 under successive contracts and had completed the school year of 1932-1933 under her continuing indefinite contract described in Section 1, of the Indiana Teachers' Tenure Act of 1927, and after the enactment of the Teachers' Tenure Act of 1933, being Chapter 116 of the Indiana Acts of 1933, beginning at page 716, referred to hereafter as the Act of 1933 or the Amendatory Act.

This Act of 1933 differs from the Act of 1927 in three respects only, namely, omitting therefrom all reference to school township corporations, though retaining all other corporations within its terms, adding to the act a provision theretofore contained in a separate statute requiring uniform contracts and that the form and wording be prescribed by the State Superintendent of Public Instruction, and also fixing for the first time an age limit of teachers at 66 years.

This Amendatory Act appears in Appendix D, p. 64, of this brief.

It is claimed on behalf of the respondent that the Act of 1933 abrogated the employment relationship between petitioner and respondent and that he was therefore under no contractual obligation to respect the continuing contract of the petitioner.

The petitioner on the other hand insists that her tenure contract is a continuing contractual obligation on the part of the respondent and can be canceled only as provided

in the act, and that this continuing contractual obligation is within the protection of the provisions in Article 1, section 10, of the Constitution of the United States forbidding the impairment of the obligation of contracts.

(a) The Petitioner's Complaint.

After alleging her qualifications as the holder of a life license issued by the duly constituted authorities of the State of Indiana to teach primary grades in the schools of this state, the petitioner charged therein:

> "That in September, 1924, under a contract with Chester School Township of Wabash County, Indiana, this relatrix began to teach primary grades in the school maintained at Servia, Indiana, by said Chester Township of Wabash County, Indiana. That under successive contracts thereafter plaintiff's relatrix taught in the schools of said Chester School Township of Wabash County, State of Indiana, until the year of 1932-1933 continuously and taught more than five years prior to the said school year of 1932-1933. That the contracts for the school year of 1931-1932 and 1932-1933 contained in the clause as follows, to wit: 'It is further agreed by the contracting parties that all of the provisions of the Teachers' Tenure Law, approved March 8, 1927, shall be in full force and effect in this contract' " (R. p. 1).

The petitioner charged facts showing the attempted illegal cancellation of her indefinite contract as a permanent teacher contrary to the provisions of the Teachers' Tenure Act approved March 8, 1927, and also alleged that she was permitted to continue to teach under her indefinite contract for the years 1933-1934.

The complaint then charged:

> "That said defendant has stated that he will not

reinstate this relatrix as a permanent teacher in the schools of said Chester School Township and that her employment would end at the end of the school year of 1933-1934, which school year ends in April, 1934" (R. p. 3).

The petitioner's complaint concluded with the following prayer:

"Wherefore, plaintiff sues and prays that said defendant be mandated to continue the employment of this relatrix as a teacher in the schools operated by said defendant in Chester School Township of Wabash County, State of Indiana; and for all other relief right and proper" (R. p. 4).

The Wabash Circuit Court sustained the respondent's demurrer to petitioner's complaint, which demurrer appears in the record on pages 5, 6 and 7, and on October 24, 1934, rendered judgment accordingly against petitioner (R. p. 7).

(b) **The Issues in the State Supreme Court.**

As appears from the majority opinions of the Supreme Court the only grounds contained in the memorandum attached to the demurrer considered by the Supreme Court were the following:

"That the complaint shows that the action is based upon Section 1 of an Act of the Legislature of the State of Indiana, approved March 8, 1927, which said statute was repealed by the Legislature of the State of Indiana in so far as it applied to school teachers' tenure law in townships in said state.

"That the plaintiff's action is founded upon a statute which has been repealed by the Legislature of the State of Indiana, and there was not, at the time of the

filing of this suit, any law in force in said State of Indiana under which this action can be maintained" (R. p. 6).

All the issues which were considered by the Supreme Court of Indiana on the original hearing in that court are set forth in the first two paragraphs of the first majority opinion as follows:

"Fansler, J.: By this action it is sought to mandate appellee to continue relatrix in the employ of the township as a school teacher under the Act of 1927 (Acts 1927, c. 97, p. 259), which provides that a person who has served for five or more successive years as a teacher, and shall thereafter enter into a contract for further service, shall become a permanent teacher. The act was amended in 1933 (Acts 1933, c. 116, p. 716; Burns' Ann. St. 1933, Sec. 28-4307), and made to apply to city and town school corporations only. Townships, to which the act originally applied, were omitted in the amendment, which had the effect of repealing the law so far as township schools and the teachers therein are concerned.

"A demurrer to the complaint was sustained. The relatrix contends that this was error; that, having become a permanent teacher under the Teachers' Tenure Law before the amendment, she had a vested property right in her indefinite contract, which may not be impaired under the Constitution. The question is whether there is a vested right in a permanent teacher's contract; whether, under the tenure law there is a grant which cannot lawfully be impaired by a repeal of the statute" (R. p. 13).

In the petitioner's petition for rehearing before the Supreme Court of Indiana, she set forth substantially the same grounds and assignments of errors as are herein set out and relied upon. The Court below considered this

petition and in a majority opinion overruled the same, saying, in part:

> "On petition for rehearing, appellant earnestly contends that the decision of this case gives a retroactive effect to a statute, and permits the impairment of the obligation of a binding contract." "The original opinion was intended to be understood as expressing the view that no contractual right to be continued as a teacher from year to year is involved" (R. p. 31).

This opinion is further supplemented by a certificate signed by the Chief Justice and all the Judges of the Supreme Court of Indiana, and which contains the following recital:

> "A demurrer to the complaint was sustained. The relatrix contends that this was error; that, having become a permanent teacher under the Teachers' Tenure Law before the amendment, she had a vested property right in her indefinite contract, which may not be impaired under the Constitution.
>
> "In the opinion the word 'Constitution' referred to, and was intended to mean, Article I, Section 10, of the Constitution of the United States of America" (R. p. 34).

The appellant appealed from a judgment sustaining respondent's demurrer in the trial court (R. p. 7). The Supreme Court of Indiana affirmed this judgment.

(c) Statutes Involved or Related.

(a) In Appendix A, Section 2, of Chapter 111 of the Acts of the General Assembly of Indiana for 1899, page 173 (Burns' Ind. Stat. Ann. 1933, Section 28-4303), "concerning uniform contracts and the recording thereof.

(b) In Appendix B, Section 1, chapter 91, page 195, Ind. Acts 1921, Burns' Ind. Stat. Ann. 1933, Section 28-4304.

(c) Section 2, Chapter 92, page 430, of the Acts of the General Assembly of Indiana of 1852, being Burns' Ind. Stat. Ann. 1933, Section 1-302, reading as follows:

> "No rights vested, or suits instituted, under existing laws shall be effected by repeal thereof, but all such rights may be asserted and such suits prosecuted as if such laws had not been repealed."

(d) In Appendix C, the Teachers' Tenure Act of 1927, being Sections 1, 2, 3, 4, 5 and 6 of Chapter 97 of the Acts of the General Assembly of Indiana for 1927 (Burns' Ind. Stat. Ann. Supp. 1929, Section 6967.1).

(e) In Appendix D, the Teachers' Tenure Act of 1933 (Amendatory of the Act of 1927), being Sections 1, 2, 3, 4 and 5 of Chapter 116, of the Acts of the General Assembly of Indiana for 1933, beginning at page 716 (Burns' Ind. Stat. Ann. 1933, Section 28-4307).

Both Section 6 of the said Act of 1927 and Section 5 of said Act of 1933 provided:

> "This act shall be construed as supplementary to an Act of the General Assembly, page 195, Acts 1921, entitled, 'An Act concerning teachers' contracts and providing for the repeal of conflicting laws.' "

(f) In Appendix E the Teachers' Minimum Wage Act, Chapter 56, Section 1, Acts of Special Session of 1920, page 194 (Burns' Ind. Stat. Ann. 1933, Section 28-4314, including title thereto).

(g) In Appendix F the Act of the Legislature of New Jersey, as quoted in Phelps v. Board of Education of Town of West New York, 57 Sup. Ct. Rep. 483.

(d)

No question of the propriety of mandamus as the proper remedy was made below. However, under the decisions in Indiana it is held:

> "That if a contractual right is so inseparably bound with an imperative duty laid upon public officials by law as to require the performance of the duty of the officers to further or secure such rights, mandamus may be invoked to coerce official action."
>
> Board of Trustees v. State (1911), 175 Ind. 147 (93 N. E. 851);
>
> State ex rel. City of Marion v. Marion Light & Heating Co. (1910), 174 Ind. 622 (92 N. E. 731).

This remedy has also been recognized as available for the enforcement of tenure teachers' contracts under the Act of 1927 in cases decided prior to State ex rel. Anderson v. Brand case, now reviewed.

> School City of Elwood v. State ex rel. Griffin (1932), 203 Ind. 626, 634 (180 N. E. 471, 473);
>
> Kostanzer v. State ex rel. Ramsey (1933), 187 N. E. 392, 205 Ind. 536.

No question was raised or considered below that petitioner's complaint was a sufficient allegation of the execution of her contract in writing. It had previously been held by the Indiana Supreme Court that the allegation that a teacher's contract was entered into necessarily meant in view of the statute requiring the same to be in writing was a sufficient allegation of a written contract.

> Brumfield v. State ex rel. Wallace (1934), 206 Ind. 647 (190 N. E. 863, 867).

There exists no provision in the Constitution of Indiana limiting or qualifying the power of the State of Indiana or its agents to enter into a contract with the teacher and likewise no general or special statute to that effect, excepting only the Act of 1899 and of 1921, referred to above, requiring the teacher's contract to be in writing.

III.

SPECIFICATIONS OF ERROR.

(1) The Court erred in holding that the employment relationship existing by virtue of petitioner's indefinite contract under Section 1 of the Indiana Teachers' Tenure Act of 1927 (Indiana Acts of 1927, Chap. 97) was not a contract.

(2) The Court erred in holding that the petitioner's indefinite contract entered into by and between the petitioner and the respondent under the Indiana Teachers' Tenure Act of 1927, being Chapter 97 of the Acts of the General Assembly of Indiana, for the year 1927, was not a continuing contract until canceled as in said act provided, but a contract for the current year only.

(3) The Court erred in holding that the continuing contract of the petitioner under Section 1, Chapter 97 of the Indiana Acts of 1927, did not constitute a contract within the meaning of the clause in Section 10 of Article I of the Constitution of the United States forbidding a state to pass any law impairing the obligation of a contract.

(4) The Court erred in holding that the repeal of the Indiana Teachers' Tenure Act of 1927, Chapter 97, Indiana Acts of 1927, in so far as it affects townships and township schools, permits the township school corporation to impair the obligation of contracts that had ripened into permanent teachers' contracts under the prior law, notwithstanding the provisions of Section 10 of Article I of the Constitution of the United States forbidding any state to pass a law impairing the obligation of contracts.

(5) The Court erred in holding that petitioner's con-

tract with respondent was not within the protection of the provisions of Article I, Section 10, of the Constitution of the United States forbidding a state to pass any law impairing the obligation of contracts.

(6) The Court erred in denying the right, claimed by petitioner based upon the clause in Article I, Section 10, of the Federal Constitution forbidding the impairment of the obligation of contracts, to continue to hold, enjoy and enforce her subsisting permanent teacher's contract, consisting of the provisions of the Indiana Teachers' Tenure Act of 1927 and her written contract, notwithstanding the impairing effect thereon given to the Indiana Amendatory Act of 1933 (Indiana Acts of 1933, Chapter 116), as construed by the Supreme Court of Indiana in the judgment herein sought to be reviewed.

(7) The Court erred in holding that the Amendatory Act of 1933, being Chapter 116 of the Indiana Acts of 1933, construed by the court below to abrogate the petitioner's contract as a permanent teacher, was not in conflict with the clause of Section 10 of Article I of the Constitution of the United States, forbidding a state to pass any law impairing the obligation of contracts.

IV.

SUMMARY OF ARGUMENT.

A.

THE CONSTRUCTION OF THE STATUTE INVOLVED.

1.

The Indiana Teachers' Tenure Act of 1927 manifests a clearly expressed intention to establish contractual relations with "permanent teachers." This plainly appears from the following:

(a) The title of the Indiana Teachers' Tenure Act of 1927. Appendix C, p. 59, this brief.

(b) The title of Chapter 91, Section 1, page 195, Acts of 1921 (Burns' Ind. Stat. Ann. 1933, Sec. 28-4304), entitled "An Act concerning teachers' contracts and providing for the repeal of conflicting laws," to which the Act of 1927 is expressly, in section 6 thereof, declared to be "supplementary." Appendix B, p. 58, this brief.

(c) Section 6 of said Act of 1927.

(d) The recurring use of the word "contract" throughout the Act of 1927, in section 1 ten times; in section 2 eleven times; in section 4 four times.

(e) The Indiana Act of 1899, Acts of 1899, page 173, sections 1 and 2 of which were re-enacted in the above Act of 1921, providing "that all contracts hereafter made by and between teachers in a school corporation in the State of Indiana shall be in writing, signed by the parties to be charged thereby * * *."

(f) The Act of March 8, 1873, Chapter 25, Section 9, page 75 of the Acts of 1873, providing, "The township trustee shall specify in a written contract with each teacher that such teacher shall attend the full session of each institute."

Also prior acts of the General Assembly of Indiana expressly indicating a contractual relationship in that such statutes required the teacher to be "employed."

Act March 5, 1855, Chapter 148, Section 107 (Gaven v. Hord, Indiana Statutes 1860);
Act March 6, 1865, page 3, Section 28 (Burns' 1881, Section 4501);
Act March 3, 1871, Chapter 25, Section 5, Clause 5, pp. 20-22.

(g) Section 1-201, Clause 1, Burns' Ind. Stat. Ann. 1933, being an act continuously in force since 1852, prescribing a rule for the construction of all statutes that "words and phrases shall be taken in their plain or ordinary and usual sense."

2.

The Act of 1927 expressly declares the intention of the Legislature to establish continuing contractual relations with permanent teachers. This appears from the following:

(a) The express declaration contained in Section 1 of the Act of 1927:

> "That such contract shall be deemed to continue in effect for an indefinite period and shall be known as an indefinite contract. Such an indefinite contract shall remain in force unless succeeded by a new contract signed by both parties or unless it shall be canceled as provided in Section 2 of this Act * * *."

(b) The ultimate object of this type of legislation, namely, to improve and develop the efficiency of the schools and improve the education of the children therein by stabilizing the employment of teachers, and relieving them of fear of discharge on political or nonprofessional grounds.

Contracts binding the school corporation for a year only could not carry out this object and hence a construction of the act viewing the contracts as binding the school corporation from year to year only would frustrate the accomplishment of the object of the statute.

3.

Where the language of a statute is plain and unambiguous it must be held to mean what it plainly expresses.

United States v. Standard Brewery Inc. (1919), 251 U. S. 210, 217, 64 Law. ed. 229, 234;
United States v. Missouri Pac. Ry. Co. (1928), 278 U. S. 269, 277, 278, 73 Law. ed. 322, 376;
Cheney v. State (1905), 165 Ind. 121 (74 N. E. 892);
Fessler v. Bosson (1920), 189 Ind. 484 (128 N. E. 145);
Peabody Alwert Coal Co. v. Yandell (1913), 179 Ind. 222 (100 N. E. 758);
Hyand v. Rochelle (1913), 179 Ind. 671 (100 N. E. 842);
Cain v. Staley Mfg. Co. (1935), 97 Ind. App. 235 (186 N. E. 265).

Where the words of the statute are free from ambiguity and its purpose plain then the courts have no power to create exceptions thereto by construction.

Commissioner of Immigration v. Gottlieb et al. (1923), 265 U. S. 310, 313 (68 Law. ed. 1031, 1033);

United States v. Thompson (1927), 246 U. S. 457, 551 (62 Law. ed. 876, 879);
Pittsburgh C. C. & St. L. Ry. Co. v. Parker (1922), 191 Ind. 868 (134 N. E. 890).

Consequently, when the Act of 1927 declared, referring to the contract with a permanent teacher "such contracts shall be deemed to continue in effect for an indefinite period," and, further, "such an indefinite contract shall remain in force unless succeeded by a new contract signed by both parties or unless it shall be canceled," as provided in the act, both the contractual nature and the continuing force of the contract thus declared in terms are thereby placed beyond the power of judicial interpretation to construe as binding on the school corporation only from year to year.

4.

The language of a statute should be construed to avoid defeating the legislative purpose if that can be done by a reasonable and natural construction of the language used.

Crittenberger v. State Savings & Trust Co. (1920), 127 N. E. 522.

The true object of all statutory interpretations is to ascertain the meaning and will of the law-making body, and it is not permissible, under the pretense of interpretation, to make a law, either by extension or restriction, which shall depart from the legislative intent.

J. Wooley Coal Co. v. Tevault (1918), 187 Ind. 171 (119 N. E. 485).

5.

A continuing contract was the device and instrumentality chosen by the Legislature to accomplish its object of stabilizing the employment of teachers.

Arburn v. Hunt (1934), 207 Ind. 61 (191 N. E. 148, 149);
Ratcliffe v. Dick Johnson School Twp. (1933), 204 Ind. 525 (185 N. E. 143);
School City of Elwood v. State ex rel. Griffin (1932), 203 Ind. 626 (180 N. E. 471);
Kostanzer v. State (1933), 205 Ind. 536 (187 N. E. 307, 341).

6.

In many decisions of the appellate tribunals of the state prior to the enactment of the Teachers' Tenure Act of 1927 recovery was permitted by the school teacher on the theory that her employment was contractual.

Harrison School Tp. v. McGregor, 96 Ind. 185;
Kiefer v. Troy School Tp., 102 Ind. 279;
Morrison v. McFarland, 51 Ind. 206;
Schwier v. Zitike, 136 Ind. 210;
Charlestown School Tp. v. Hays, 74 Ind. 127;
Sparta School Tp. v. Menell, 138 Ind. 188 (37 N. E. 1059);
School Town of Carthage v. Gray, 10 App. 428 (37 N. E. 1059);
Henry School Tp. v. Meredith, 32 App. 607 (70 N. E. 393);
Waltz School Tp. v. Derck, 74 App. 700 (29 N. E. 414);
School Town of Milford v. Zeigler, 1 App. 138;
Gregg School Tp. v. Hinshaw, 76 App. 503 (132 N. E. 586);
School City of Lafayette v. Bloom, 17 App. 461.

The contractual nature of the relationship enjoyed by teachers holding indefinite contracts under the Act of 1927 was recognized in all decisions under that act until the rendition of State ex rel. Anderson v. Brand, Trustee, being reviewed herein.

State ex rel. Clark v. Stout, 206 Ind. 58 (187 N. E. 267);
Kostanzer v. State ex rel. Ramsey, 205 Ind. 536 (187 N. E. 337);
State ex rel. Black v. Board of School Comrs., 205 Ind. 582 (187 N. E. 392);
Barnes v. Mendenhall, 98 Ind. App. 229 (183 N. E. 556);
School City of Elwood v. State ex rel. Griffin, 203 Ind. 626 (180 N. E. 471);
School City of Evansville v. Culver, 94 Ind. App. 692 (182 N. E. 270);
Brumfield v. State ex rel. Wallace (1934), 206 Ind. 647 (190 N. E. 863-867).

7.

The view expressed in the majority opinion on rehearing below relying on Davis v. Davis, Director (1926), 197 Ind. 386 (151 N. E. 134), and Kostanzer et al. v. State ex rel. Ramsey (1933), 205 Ind. 536, 548, 549 (187 N. E. 337, 342), to the effect that petitioner's contract is not binding as a continuing contract for "want of mutuality" is not sound and is not supported by the authorities cited because Davis v. Davis, Director, supra, was based on a wholly different state of facts, and the holding in the Kostanzer case is in conflict therewith.

8.

In the Court's language in the Kostanzer case rejecting the suggestion of "want of mutuality" of obligation ap-

pears the sound view that it was for the Legislature to determine what was a sufficient consideration moving from the teacher to the state and when it should be received, any common-law rules to the contrary notwithstanding. The common law must yield where it is inconsistent with the statute. Burns' Ind. Stat. Ann. 1933, section 1-101, declaring the law of the state.

Connell v. State ex rel. Thompson (1925), 196 Ind. 421 (144 N. E. 882);
Southern Railroad Co. v. Howerton (1914), 182 Ind. 208 (106 N. E. 369);
Titus v. Scantling (1935), 4 Blackford 89;
Fechheimer v. Washington (1881), 77 Ind. 366.

9.

The doctrine of consideration is merely historical, and theories with respect thereto are being developed in the direction of Lord Mansfield's proposition that no promise made as a business transaction can be nudum pactum.

Justice Holmes in 10 Harvard Law Rev. 472.

10.

The so-called "want of mutuality" relates only to considerations even from the standpoint of the common law. Moreover, the common-law rule supports the view that the elements of contract prescribed in the Teachers' Tenure Act providing that a preliminary contract for further services shall, upon the performance thereof, remain binding as a continuing contract and obliging the teacher to give a five days' written notice within a limited period each year includes a legal consideration. This view of the

common law does not lack "modern instance" in great abundance or the support of profound research.

Pilkington and others v. Scott and others (1846), Eng. Exchequer, 15 M., etc., W. 655;
Thomas v. Anthony (1916), 30 Cal. App. 217 (157 Pac. 823);
Cincinnati Exhibition Co. v. Marsans (1914), District Court of Missouri, E. D., 216 Fed. 269;
McCall v. Wright (1910), 198 N. W. 143 (91 N. E. 516), 31 L. R. A. N. S. 249;
Franklin Tel. Co. v. Harrison (1892), 145 U. S. 259;
Orbach v. Paramount Pictures Corp. (1919), 23 Mass. 281 (103 N. E. 669);
Philadelphia Ball Club v. Lajoie (1902), 202 Pa. 210, 51 Atlantic 973;
Gurfein v. Werbelovsky (1922), 97 Conn. 703 (118 Atl. 32);
Maddox Motor Car Co. v. Ford Motor Car Co. (Tex. 1930), 23 S. W. (2d) 338;
Farmers Handy Wagon Co. v. Newcomb (1916), 192 Mich. 634 (15 N. W. 152);
Pollock on Contracts, page 191 (8 ed).

Restatement of the Law, American Law Institute—last sentence in Illustration 1, page 89, Vol. 1.

The Effect of Options on Considerations—Arthur L. Corbin (34 Yale Law Journal, 371, 386, 387 [April 1925]). (See criticism of Velie Motor Car Co. v. Ford Motor Car Co. [1912], C. C. A. 71, 94 Fed. 324, in this article, page 434, in Selected Readings on the Law of Contracts, Assoc. Am. Law Schools 434, 448, 450.)

Discussion of Consideration in Introduction to the Philosophy of Law—Pound, pp. 237, 272, 273, 274, 275, 276 and 279.

11.

Under the express language of the act the contract for "further service" which the act requires following five successive years of service, preliminary to the time when the same becomes an indefinite contract, performance of this preliminary contract is clearly a consideration antecedently received by the school corporation. Moreover, under the authorities just cited, the fact that indefinite contract continues in effect until the teacher discharges the obligation he assumes to give a written five-day notice within a restricted period constitutes a legal consideration, whether viewed as a detriment to him or an advantage to his promisee.

12.

These views are consistent with the consensual nature of the contract, which is a composite of the agreement of the parties for "further service" and the statute, since both concur that under the terms of the statute such contract will upon performance operate as a statutory continuing contract.

13.

The Act of 1927 read with the Act of 1921, to which it is expressly "supplementary," plainly requires the execution of a written contract and, therefore, "the case for an obligation binding upon the state is clear."

Dodge v. Board of Education (Nov. 8, 1937), 82 Law. ed. 77, 79.

14.

Phelps v. Board of Education of the Town of West New York, 57 S. Ct. 483, holding that the New Jersey Tenure Statute there involved was not contractual does

not control. This New Jersey Act, set out in Appendix F, p. 71, this brief, not only did not employ the instrumentality or device of a contract in its tenure system, but the educational history of New Jersey did not have the same contractual background as has been shown to have existed in Indiana. The New Jersey statute did not, as does the Indiana Act to which the Indiana Teachers' Tenure Act of 1927 is supplementary, expressly require contracts to be in writing.

15.

The contract here involved is not variable as to compensation in any such manner as to vitiate the certainty of its terms. While under section 1 of the act a proviso reads: "That teachers' contracts may contain provisions for the fixing of the amount of annual compensation from year to year by a salary schedule adopted by the school corporation and such schedule shall be deemed to be a part of such contract." Nevertheless, this is merely a case of id certum est quod certum reddi potest. The fixing of a schedule is a public act of a general nature by classification of teachers reasonably and not arbitrarily made.

Hutton v. Gill (1937), 8 N. E. (2d) 818 (Ind. Sup. Ct.), holds that such schedule must be based on a reasonable, natural classification and may not be arbitrarily fixed.

16.

In Over v. Byram Foundry Co. (1906), 37 Ind. App. 452, 455, a contract was upheld in which the right to cancel at any time was unilateral. In School City of Elwood v. State, supra, it was distinctly held by the Supreme Court of Indiana in March, 1932, prior to the petitioner's last

written contract for the school year 1932-1933, that the employment of a permanent teacher under the Act of 1927 was contractual and remained contractual.

17.

When the state court has once interpreted a contract, the interpretation becomes part of the contract and any subsequent change to the injury of a contracting party impairs the obligations of the contract.

Worthen Co. ex rel. v. Kavenaugh (1935), 295 U. S. 56, 55 S. Ct. 555 (79 L. Ed. 1298);
Sauer v. New York (1907), 206 U. S. 536, 27 S. Ct. 686 (51 L. Ed. 1176);
Muhlker v. New York etc. R. Co. (1905), 197 U. S. 570, 25 S. Ct. 522 (49 L. ed. 872);
Dougless v. Pike County (1879), 101 U. S. 679-686 (25 L. ed. 968).

18.

A statute granting a franchise is more in the nature of a contract than a "law of the land" in the constitutional sense. Tipton County v. Rogers Locomotive & Mach. Works, 103 U. S. 523.

Franchises granted to private corporations are necessarily continuing contracts and upon acceptance become a contract within the protection of the contract clause. New York Electric Lines Co. v. Empire City Subway, 235 U. S. 179; Jefferson College v. Washington & Jefferson College, 23 Wall 190, 20 Law ed. 550; Ohio Public Service Co. v. State of Ohio ex rel. Fritz (1926), 274 U. S. 12, 14 (71 Law ed. 898, 901). Likewise, corporate charters: Long Island Water Co. v. Brookline, 166 U. S. 685, 41 Law ed. 1165; Stone v. Mississippi, 101 U. S. 814, 25 Law ed. 1079.

B.

THE CONSTRUCTION OF THE STATE SUPREME COURT NOT CONCLUSIVE IN THIS COURT.

The Supreme Court of the United States is not bound by the construction given by the highest court of a state to a state statute, or to a contract executed pursuant to its terms, where the contract clause of the Federal Constitution is involved. This rule applies as to the existence and terms of the contract and the provisions of the statute itself. In all such cases this Court will exercise its independent judgment.

Phelps v. Board of Education of the Town of West New York, 57 S. Ct. 483;
Coombes v. Getz, 285 U. S. 434, 441, and cases there cited;
Appleby v. City of New York, 271 U. S. 364, 379, 380;
Tidal Oil Company v. Flanagan, 263 U. S. 444, 451.

C.

CONTRACTS OF STATES AND THOSE EXECUTED PURSUANT TO STATUTES ARE WITHIN THE PROTECTION OF THE CONTRACT CLAUSE.

(1) It is indisputable that a contract may consist of the provisions of a statute, the acceptance of the terms of the statute and the judicial construction thereof prevailing at the time of such acceptance.

New Jersey v. Yard, 95 U. S. 110, 114;
Douglass v. Pike County, 101 U. S. 679, 686;
Worthen Co. ex rel. Board of Commissioners of Street Improvement District v. Kavanaugh, 295 U. S. 56, 60.

(2) The obligation of such a contract, even if a state is a party thereto, cannot be impaired under the contract clause.

Hall v. Wisconsin, 103 U. S. 5, 10, 11;
Yard v. New Jersey, 95 U. S. 110, 114;
Woodruff v. Trapnall, 10 How. 190, 196;
Long Island Supply Co. v. Brooklyn Trust & Guaranty Co., 166 U. S. 685, 690, 691, commenting on Hall v. Wisconsin;
Coombes v. Getz, 285 U. S. 434, 441, and cases there cited;
Carondelet Canal & Nav. Co. v. Louisiana (1914), 233 U. S. 362, 378.

(3) Notwithstanding any repeal that may have been effected by the Teachers' Tenure Amendatory Act of 1933 of the provisions of the Teachers' Tenure Act of 1927, through the elimination of township school corporations from the Amendatory Act, nevertheless, the contract of petitioner having been made under the authority of the Act of 1927, acquired an independent existence and would survive the destruction of the statutory provision which gave this contract birth.

Coombes v. Getz, 285 U. S. 434, 441.

There is no provision in the statutes or Constitution of Indiana as to the effect of a repealing statute similar to the California statute pointed out in the dissenting opinion of Mr. Justice Cardozo in Coombes v. Getz. On the contrary, a specific statute of Indiana, quoted in the foregoing statement of the case, expressly provides that vested rights are immune from the effect of repealing statutes.

D.

THE CONTRACT CLAUSE AND THE POLICE POWER.

(1) Police power can be exercised only within such limits as affords proper respect for the contract clause of the Constitution and may not be exercised in such manner as to abrogate the contract clause.

Treigle v. Acme Homestead Assoc. (1936), 297 U. S. 189, 196 (80 L. ed. 575-580);
W. B. Worthen v. Thomas, 292 U. S. 426, 431, 432;
Worthen Co. ex rel. Board of Commissioners et al. v. Kavanaugh, 295 U. S. 56, 60.

(2) The police power affords no excuse for disregarding private rights where the object of the Legislature can be achieved by regulation and prohibition is not required therefor.

Adams v. Tanner (....), 244 U. S. 590, 596;
Grand Trunk Western Railroad Co. v. South Bend (....), 227 U. S. 544, 555;
City of Owensboro v. Cumberland Telephone & Telegraph Co. (1913), 230 U. S. 27.

(3) The Indiana Teachers' Tenure Act of 1927 contains within sections 2 and 5 hereof ample provisions for maintaining the efficiency of teachers, conformity to the reasonable rules of the School Board and the necessities of school administration. The act provides for the termination of the continuing contract of the teacher for "incompetency," "insubordination" (which shall be deemed to mean willful refusal to obey the school laws of this state or reasonable rules prescribed for the government of the public schools of such corporation), "neglect of duty," "immorality," "justifiable decrease in the number

of teaching positions," or other "good and just cause," but may not be made for political or personal reasons. Section 5 authorizes enforced leave of absence because of physical or other disability. Under these clauses the Supreme Court of Indiana has held that the words "other good and just causes" includes "lack of co-operation" or any good cause which bears reasonable relation to the teacher's fitness or capacity to discharge his duties.

Stiver v. State ex rel. Kent (1936), 1 N. E. (2d) 1006, 1008.

Under the Massachusetts statutes it has been held that "other good cause" includes any grounds put forward in good faith which are not arbitrary, irrational, unreasonable or irrelevant to administering and maintaining an efficient school system.

Rinaldo v. Dreyer (1936), 1 N. E. (2d) 37.

(4) Under the doctrine of Grand Trunk Western Railroad Co. v. South Bend, supra, further provisions of a regulative as distinguished from an abrogative nature could be made by the Legislature if the provisions of the Act of 1927 were not sufficiently elastic to permit the dismissal of a teacher where the reasonable requirements of a public school system demanded such dismissal.

(5) Procuring a mere advantage to the state arising from the cancellation of existing contracts is not a legitimate exercise of the police power and does not justify the impairment of existing contracts. Nor does a change of mind on the part of the Legislature as to the balance of public convenience justify such impairment.

Grand Trunk Western Railroad Co. v. South Bend, 227 U. S. 544, 555.

There is no unrestricted authority under the police

power to accomplish whatever the public may presently desire.

Panhandle Eastern Pipe Line Co. v. State Highway Commissioners, 294 U. S. 613, 622.

Public franchises, held protected under the contract clause in cases cited above, afford no more justifiable occasion for protection than does the investment represented by a teacher in her contract and the education she has at stake therein.

"Industry, talent and integrity constitute a fund which is as confidently trusted as property itself." Chief Justice Marshall in Sturges v. Crownshield, 4 Wheat. 122, 128, quoted with approval in W. B. Worthen v. Thomas, 292 U. S. 426, 431, 432. The Amendatory Act of 1933 does not expressly declare any purpose to abrogate pre-existing contracts nor does it recite or intimate the existence of any public evil, mischief, sought to be remedied, and merely prescribes a rule for the formation of future contracts. Neither this amendatory statute nor the majority opinion of the court below reveal any evils in the pre-existing contracts or declare that the police power was exercised for such or any similar purpose. "Contracts may not under the police power be abrogated for no discernible public purpose." Treigle v. Acme Homestead Assoc., supra.

(6) There is no evil in contractual employment of teachers, because the state has continued the practice and has permitted the indefinite contract system to remain in city and town school corporations, under the Amendatory Act of 1933, which, however, in rural schools, now abolishes hearing and notice before dismissal and renews the permissibility of dismissals for personal and political reasons. The provisions thus abolished in the rural schools were to the public advantage and cannot possibly be deemed a public evil.

V.

ARGUMENT.

Two fundamental legal questions are involved in this case: Whether the petitioner's employment relationship with the respondent under the Teachers' Tenure Act of 1927 was a continuing contract in the true sense of the word, and whether, if it did constitute a continuing contract, it is protected by the contract clause of the Federal Constitution against impairment through the abrogative effect given by the court below in the majority opinion to the amendatory Teachers' Tenure State of 1933.

As to the first question it is difficult to escape from the plain language of the Act of 1927, Section 1. This section has prescribed as the qualification for a person to enter into such a continuing contract that he must have served under contract as a teacher in the school corporation for five years or more consecutive years, and then further requires such persons to "enter into a teacher's contract for further service with such corporation." If this qualification exists and the contract for "further service" is entered into, the act provides: "Upon the expiration of any contract between such school corporation and a permanent teacher, such contract shall be deemed to continue in effect for an indefinite period and shall be known as an indefinite contract. Such an indefinite contract shall remain in force unless succeeded by a new contract signed by both parties or unless it shall be canceled as provided," etc. That the Legislature was employing a contractual relationship as the very means of accomplishing the purpose of the act seems abundantly clear from the language just quoted, from the title of the Teachers' Tenure Act of 1927 (Appendix C), from the title of the Indiana Act of 1921 (Appendix B) to which it is de-

clared specifically in Section 6 of the Act of 1927 to be "supplementary," from the redundant use of the word "contract" throughout the act, from the provisions of the Act of 1899, page 173, which declares "that all contracts hereafter made by and between teachers and school corporations shall be in writing signed by the parties to be charged thereby," from the traditional contractual relationship prevailing for many years in Indiana, as well as from the mandatory construction required by Section 1-201, Clause 1, Burns' Ind. Stat. Ann. 1933, that "words and phrases shall be taken in their plain or ordinary sense."

The Legislature, with a choice of methods which the experience of teachers' tenure systems placed at its disposal, such as a merely civil service status resting on a legislative direction to officers and stopping short of contractual relationhip, permissive collective bargaining, or the contractual method, deliberately preferred achieving the security of the teacher through the medium of a continuing contract inviolable for merely nonprofessional, personal or political reasons.

In Dodge v. Board of Education, supra (Nov. 8, 1937), Vol. 82, 3 Adv. Op. L. Ed. 77, 79, this Court, speaking through Mr. Justice Roberts, remarks:

> "In determining whether a law tenders a contract to a citizen it is of first importance to examine the language of the statute. If it provides for the execution of a written contract on behalf of the state the case for an obligation binding upon the state is clear."

It is sufficiently alleged in petitioner's complaint below that she had entered into the necessary written contracts. Brumfield v. State ex rel. Wallace (1934, 206 Ind. 647), 190 N. E. 863-867.

She had also performed them prior to the school year 1931-1932. The last requisite of the statute had been complied with, the contemplated consequence of an effective continuing contract had attached and [illegible] performance of its obligation entered upon long [illegible] the threatened repudiation by the respondent.

Moreover, appellant's last written contract was for the school year 1932 to 1933, and under the usual administrative practice of school corporations in Indiana, such contracts are not executed until after the conclusion of the previous school year prior, therefore, to the execution of the last written contract of the petitioner. The Supreme Court of Indiana, on March 29, 1932, in School City Elwood et al. v. State ex rel. Griffin, 203 Ind. 626, said:

> "The position of a teacher in the public schools is not a public office, but an employment by contract between the teacher and the school corporation. The relation remains contractual after the teacher has, under the provisions of a Teachers' Tenure Law, become a permanent teacher—but the terms and conditions of the contract are thereafter governed primarily by the statute."

Under an undeniable rule of law this construction of the statute made immediately prior to the petitioner's contract became an integral part of it. This contract of petitioner expressly referred to the Act of 1927 and expressly made the same a part thereof.

Cases cited under IV, 3-4, Summary of Argument above, represent but a few selections from the many precedents denying that there is any room for construction on an act that is plain and unambiguous. It will be observed that the mere fact that a teacher has taught under contract for five consecutive years in a school corporation does not operate to put the continuing contract into effect. It

requires both the consensual act of the parties in a contract "for further service" in the school corporation and the report required under section 3 of the act to be made by the school superintendent upon the teacher's preparation, experience and license. When the parties enter into a contract "for further service" by the teacher after five consecutive years of service, it is clearly in the contemplation of the parties that upon the expiration of such contract the statutory provisions will apply and convert the teacher's contract "for further service" into the indefinite contract described in Section 1 of the Act of 1927, which can be terminated only as therein provided. Initiation of a teacher's "indefinite contract" is, therefore, essentially consensual.

The contractual background of the Teachers' Tenure Act of 1927, its reiterative use of the terminology of contract and the employment of a written contract as an instrumentality for effecting the legislative purpose easily distinguishes this case from Phelps v. Board of Education of West New York, supra, and the New Jersey statute there held not to create a contract. Similar features were plainly lacking, both in the New Jersey tenure statute there considered and in the educational tradition and practice of that state.

In the light of the paramount rule of construction which requires that the path must be made smooth for the accomplishment of the legislative purpose, a construction alternative to one which recognizes that the contract described in the Act of 1927 is a continuing contract, is untenable. A construction of the act which treats the obligation of the school township as merely a contract from year to year not only ignores the purpose of the act, but defeats it. Such a construction restores the very evil which the act sought to remedy, namely, the insecurity of the teacher in

her professional employment and the permissibility of discharge for nonprofessional, personal and political reasons.

The majority opinion upon rehearing does not altogether deny to the petitioner's employment relationship the quality of a contract, but insists that the contract is not a continuing one beyond the current year The Court reasons that while the Act of 1927 was unamended or repealed by the amendatory Act of 1933, the operation of the contract through the years rested entirely upon the official duty imposed by the local school officers by the Act, and this official duty being removed by the enactment of the Act of 1933, as to the employment of teachers in township schools, the contractual relationship thereupon ceased.

This view offends against the language of the Act, in that the Act attaches the quality of survival from year to year to the contract rather than to any official duty. The contract is purely consensual in its origin and such compulsion as the Act exercises upon the officers of the school corporation is entirely incidental to the recognition of the continuing contract and the contract is not incidental to an official duty. The Court's view seems to fail to recognize that the purpose of the Legislature in the enactment was not to establish a civil service system, but to place the security of the teacher on a firmer foundation, quite beyond the power of the State to disturb except to the extent that regulative changes might be required from time to time. This foundation was grounded upon the contractual obligation of the State itself created through the act of its agencies, the several school corporations.

Notwithstanding the explicit provisions of the statute that the "contract shall remain in force until canceled" in the method provided in the Act, the court below insists that this plain language lacks efficacy because of want of

mutuality. This asserted want of mutuality is predicated upon the provisions of the Act that during the period between the expiration of one school year and a date thirty days before the beginning of the next school year, the teacher, under the terms of the statutory contract, has the privilege of terminating her employment thereunder by giving to the school corporation a five days written notice. Although the Act accords to the school corporation also a privilege of cancellation after notice and hearing, it is claimed that the privilege accorded to the teacher is unilateral and results in want of consideration.

Prior to the rendition of the decision in Anderson ex rel. v. Brand the Supreme Court of Indiana had carefully considered this proposition and had announced what seems to us the sounder doctrine. In Kostanzer et al. v. State ex rel. Ramsey (1933), 105 Ind. 536, 548, 549, the Court declared:

> "But there is nothing in the law of contracts to prevent one party to a contract granting to the other the privilege of rescission or cancellation on terms not reserved to the former party. The local school corporations are agents of the state, * * * and the General Assembly has power to prescribe the terms of the contract to be executed by these agents."

Putting aside for the moment what the true rule of the common law as to the point in question may be, the Kostanzer case suggests that it is for the sovereign state, speaking through the Legislature, to determine for itself in its own contracts what is a sufficient consideration moving to the State from its promisee, when it should be received, and of what it should consist notwithstanding any rule of common law to the contrary. It is the common

law and not the statute that must give way to achieve the legislative purpose.

Connell v. State ex rel. Thompson (1925), 196 Ind. 421;

Burns' Ind. Stat. Ann. 1933, Section 1-101, declaring what is the law of the state and authorities cited under Summary of Argument IV-(8).

Laying aside for a moment the necessary effect of the statute itself in disposing of the objection of lack of mutuality, the position of the court below as to the common-law rule in question is unsound and the case relied upon, Davis v. Davis, director General, supra, is not in point. In the Davis case the contract in controversy is merely a general promise of employment on each side without any certain terms whatsoever as to compensation or other elements. There was no requirement in that contract for the rendition of service for a stated period before a contract should go into force carrying a limited cancellation privilege to each party thereto, to be exercised in a certain manner and varied to suit the differing needs of the contracting party, as is provided in the statutory tenure contract. However, there was at the time of the execution of petitioner's contract a decision of long standing in Indiana rendered in 1906, which recognized a unilateral privilege of cancellation exercisable after performance is begun,

Over v. Byram Foundry Co. (1906), 37 Ind. App. 452, 455,

which, so far as the rule of common law was then declared in Indiana, entered into and constituted a part of petitioner's contract. Without entering into a discussion of the doctrine of consideration as to which the so-called want of mutuality exclusively pertains, the common law recognizes as sufficient consideration either a benefit to the promisee or a detriment to the promisor.

Statutes and contracts should, of course, be construed to be effective rather than nugatory. One reasonable view of the statute of the Act of 1927 would regard the performance of the contract of further service which must occur prior to such contract being converted into a continuing contract as adequate consideration therefor. In other words, the performance of the contract for further service would place the statutory contract within the category of the many cases holding that either an option contract or an employment contract for an indefinite period is valid if a prior consideration has been received. The statute may also be viewed as establishing a stated period of performance under the initial contract for "further service" as preliminary to the effectiveness of the teacher's indefinite contract and thus place this case within the category of precedents holding that, where performance is certain for a fixed period, a unilateral privilege of cancellation subsequently accruing does not cause want of mutuality. Either of these views of the statute places the contract within the authorities cited under summary of argument, IV, 10, supra. The present case is analogous to Pilkington v. Scott (1846), Eng. Exchequer 15 M. & W. 655, rather than to Davis v. Davis, Director, relied on by the court below. In the Pilkington case a contract containing specific provisions also provided that the employe could be dismissed from service on a month's notice and payment of a month's wages. Against the contention that the contract was unilateral and lacked mutuality, it was distinctly held that, since the contract remained in operation and its continuance could be avoided only by one of the parties discharging the burden of giving a written notice and paying wages, there was sufficient consideration.

In Philadelphia Ball Club v. Lajoie, 202 Pa. 210, the

contract was unilaterally cancellable on notice and it was held that this constituted sufficient consideration.

In Farmers' Handy Wagon Co. v. Newcomb, 192 Mich. 634, the Court passed on a contract containing the provision that the buyer had until a certain date to reconsider the buying. The buyer failed to give any notice of any reconsideration. Notwithstanding this limited right of rendering his contract ineffective before the time of performance had arrived, the Court held:

> "The order with acceptance by plaintiff became a contract subject to a right on the part of defendant to withdraw within the time stated."

The first illustration cited in The Restatement of the Law, page 89, reads—attention being called to the last sentence—as follows:

> "A promises B to act as B's agent for three years on certain terms, and B agrees that A may so act, but reserves the power to cancel the agreement at any time. B's agreement is insufficient consideration, since it involves nothing that can properly be called a promise. Otherwise, if B reserves the power to cancel on 30 days notice."

In Merchants Life Ins. Co. v. Griswold (Tex. Court of Civil Appeals) (1919), 212 S. W. 807, cancellation privileges of differing character were accorded to each party upon written notice. The Court upheld the contract against a claim of want of mutuality.

In Gurfein v. Werbelovsky (1922), 97 Conn. 703, the Court held that an order for a specific amount of plate glass at a specific price and containing adequate shipping instructions was not without consideration, because the

order contained "the option to cancel the above order before shipment." A very full discussion of the legal sufficiency of the consideration appears at pages 706, 707 of the official report. One observation of the Court is worthy of repetition here:

> "In this connection it is important that the contract is framed on the theory that it remains enforceable by either party unless and until the plaintiff brings home notice of cancellation before shipment."

It abundantly appears in the authorities cited under IV, 10, supra, that the circumstance that the contract is formally binding, and requires as an obligation thereof that a party is required to do a specific thing such as the giving of written notice within a limited time in order to terminate the obligation, is considered a legal consideration, whether regarded as a detriment to the promisor or a benefit to the promisee. This doctrine of consideration aptly fits the provisions of the continuing contract under the Act of 1927.

Attention is also called to the scholarly discussions in the Articles cited in IV, 10, above. These Articles review the history and the theory of consideration at common law. See, also, Williston on Contracts, Rev. Ed. 1936, pages 365, 366.

The refinements of the doctrine of consideration seem an airy nothing wherewith to thwart a laudable legislative purpose. Theories more intangible than scholastic distinctions should not avail to stay the sovereign will expressed in a statute. The construction resulting is unjust and inequitable. To thousands of teachers the sovereign state has said, "Here is a contract, which 'shall remain in force until canceled' as provided by statute. Forego other employment, educate our children. Take the security this

contract specifically promises you." And now to the thousands of teachers who accepted the written word of the state, it is announced: "The language of the state's contract did not mean what it said. A rule of common law prevails over the statute you relied upon. You never had a contract binding beyond a year. You may have been misled. That is your misfortune." Such a result inevitably implied in the construction prevailing below entails the dishonor of the state and imperils the social value of the security of contracts.

The observation of this Court in Hall v. Wisconsin is especially pertinent:

> "It is not to be supposed that the plaintiff in error would have turned his back upon like employment, actual or potential, elsewhere, and have stipulated as he did to serve the State of Wisconsin for the period named, if the idea had been presented to his mind that the State had the reserved power to break the relation between them whenever it might choose to do so. Nor is there anything tending to show that those who acted in behalf of the State had any such view at that time. All the facts disclosed point to the opposite conclusion as to both parties."

Faith should not thus be publicly broken with those whose patriotic duty it is to instill into the hearts and minds of our children unwavering faith in the sovereign state.

No infirmity vitiating petitioner's tenure contract can be predicated upon the permissive feature of the statute to the effect that, if so stated in the contract, wages in ensuing years may be determined by a schedule adopted by the school corporation. This does not permit an arbitrary determination of the teacher's salary so as to render the obligations of the school corporation illusory. Hut-

ton v. Gill, 8 N. E. (2d) 818 (Ind. Sup. Ct. 1937), holds that such a schedule must be based upon reasonable classification and cannot be arbitrarily fixed.

This eliminates the element of uncertainty as to compensation.

The contractual nature of the employment relationship is not disparaged by the use of the word "indefinite" in characterizing the contract in the act. This has reference clearly to its contingent duration, since at the time of its making, the occurrence of the events, which will justify cancellation by the school corporation, cannot be prophesied, such a contract is analogous to the franchise or permit of a public service corporation which is often termed "indeterminate."

Too well acknowledged to warrant discussion is the principle upon which this Court has proceeded in many recent cases: That it is not bound by the construction given by a State Supreme Court to a statute or contract in any case where the contract clause of the Federal Constitution is involved. No matter whether the subject matter of the discussion is a statute or a contract or a composite of both, this Court will exercise its independent judgment in determining the meaning, existence and terms of both. (See cases cited, Summary of Argument, B.) For the same reason, no elaboration is required as to the accepted doctrine that a contract within the meaning of the contract clause may consist of the provisions of a state statute, the acceptance of the terms of the statute and the judicial construction thereof prevailing at the time of such acceptance, or it may consist of a contract executed in pursuance of the statute and that this doctrine applies to contracts to which a state is a party as well as to contracts between private parties. (See cases cited under Summary of Argument, IV-C, 1 and 2, supra.)

In considering the effect of the amendatory Teachers' Tenure Act of 1933, and the respondent's action under the assumed authority of that act upon the petitioner's contract under the Acts of 1927, the holding of this Court in Coombes v. Getz, supra, seems controlling:

> "His (petitioner's) cause of action was not purely statutory. It did not arise upon the constitutional rule of law, but upon the contractual liability created in pursuance of the rule. Although the latter derived its being from the former, it immediately acquired an independent existence competent to survive the destruction of the provision which gave it birth. The repeal put an end to the rule for the future, but did not and could not destroy or impair the previously vested right of the creditor which in every sense was a property right."

Similarly petitioner's continuing contract as a permanent teacher under the Act of 1927 survived, as an independent entity, the statute which authorized its inception.

The ground upon which dissent arose in the decision in Coombes v. Getz, namely, a statute of the State of California, expressly providing against the saving of existing rights from the effect of statutory repeal, is not present in the instant case, because of a directly opposite provision in the statutes of Indiana. This provision of the Indiana statute specifically saves rights which have become vested prior to repeal, where the repealing act does not otherwise provide. It reads:

> "No rights vested, or suits instituted under existing laws, shall be affected by repeal thereof, but all such rights may be asserted and such suits prosecuted as if such laws had not been repealed." (Burns' Ind. Stat. Ann. 1933, Section 1-302.)

The amendatory Act of 1933 enacts nothing to the contrary.

Let us now consider the relation of the police power to the obligation of petitioner's contract under Article I, Section 10, of the Federal Constitution, protecting that contract. It should be observed that the court below did not in terms invoke the police power as a ground of its holding. The opinion, however, did refer, in its first opinion (R. 13), to the power of the state in the establishment and maintenance of public schools. This is repeated in the second majority opinion (R. 21). The majority opinion of the Court likewise declared that one Legislature cannot be bound by the action of another in relation to public welfare.

Of course, there is no specific provision in the Constitution of Indiana restricting the power of the state to incur contractual obligations in administering school affairs.

We have taken these general expressions of the court below as suggesting, at least, that the obligation of petitioner's contract was constitutionally impaired through the exercise of the police power.

The court below nowhere described or referred to any evil which the Legislature sought to remedy by the enactment of the amendatory Act of 1933. Neither the statute nor the opinion of the court below discloses any emergency or occasion for its enactment. The nearest approach thereto is found in the language of the Court (R. 14), "a future General Assembly may favor a policy of constant change of teachers. The courts are powerless to prevent such a change. Each succeeding Legislature is free and untrammeled in its right to change governmental policy."

This language of the court below may be contrasted with the language of the Supreme Court of the United

States in Panhandle Eastern Pipe Line Co. v. State Highway Commissioners, 294 U. S. 613, 622, where it is said:

> "The police power of a state, while not susceptible of definition with circumstantial precision, must be exercised within a limited ambit and is subordinate to constitutional limitations. It springs from the obligation of the state to protect its citizens and provide for the safety and good order of society. Under it there is no unrestricted authority to accomplish whatever the public may presently desire."

The language of the court below in the same opinion, in speaking of the Act of 1927, "but its enactment can be justified upon the theory that its purpose is to promote the good order and welfare of the State and of the school system by preventing the removal of capable and experienced teachers at the political or personal whim of changing office holders."

It now appears that, while no discernible public purpose is disclosed in the Court's opinion as a justification for the enactment of the amendatory Act of 1933, this very opinion announces the laudable purpose accomplished in the enactment of the Act of 1927.

Some recent statements of the Supreme Court of the United States become very applicable to the instant case.

In Treigle v. Acme Homestead Assoc. (1936), 297 U. S. 189, 196 (80 L. ed. 575, 580), Mr. Justice Roberts, speaking for the Court, said:

> "Such an interference with the right of contract cannot be justified by saying that in the public interest the operations of building associations may be controlled and regulated, or that in the same interest their charters may be amended. The statute merely attempts, for no discernible public purpose, the abro-

> gation of contracts between members and the association lawful when made. This cannot be done under the guise of amending the charter powers of the corporation. Compare Bedford v. Eastern Bldg. & L. Asso., 181 U. S. 227, 45 L. ed. 834, 21 S. Ct. 597."

And again, in the same case:

> "Though the obligations of contracts must yield to a proper exercise of the police power, and vested rights cannot inhibit the proper exertion of the power, it must be exercised for an end which is in fact public, and the means adopted must be reasonably adapted to the accomplishment of that end and must not be arbitrary or oppressive."

In Worthen & Co. v. Kavanaugh, 295 U. S. 56, 60 (1934), 79 L. Ed. 1298-1301, the Court said at page 640:

> "Not even changes of the remedy may be pressed so far as to cut down the security of a mortgage without moderation or reason or in a spirit of oppression. Even when the public welfare is invoked as an excuse, these bounds must be respected."

In W. B. Worthen v. Thomas, 292 U. S. 426, 431, 432 (1933), 78 L. Ed. 1344-1346-1347, a statute exempting the proceeds of life insurance companies from the payment of debts was under consideration, and Mr. Chief Justice Hughes, speaking for the Court, said:

> "Such an exemption, applied in the case of debts owing before the exemption was created by the legislature, constitutes an unwarrantable interference with the obligation of contracts in violation of the constitutional provision. Gunn v. Barry, 15 Wall. 610, 622, 623, 21 L. Ed. 212, 214, 215; Edwards v. Kearzey, 96 U. S. 595, 604, 24 L. Ed. 793, 797; Bank of Minden v. Clement, 256 U. S. 126. Justice Marshall, in Sturges v. Crownshield, 4 Wheat. 122, 198, 4 L. Ed. 529, 549, ob-

served that 'it is not true that the parties have in view only the property in possession when the contract is formed, or that its obligation does not extend to future acquisitions. Industry, talents, and integrity, constitute a fund which is as confidently trusted as property itself. Future acquisitions are, therefore, liable for contracts; and to release them from this liability impairs their obligation.' This principle was applied to an exemption of insurance moneys, in relation to antecedent debts, in Bank of Minden v. Clement, 256 U. S. 126, 65 L. Ed. 857, 41 S. Ct. 408, supra,"

and again, after referring to Home Bldg. & L. Asso. v. Blaisdell, 290 U. S., page 433, the Court said:

"But we also held that this essential reserved power of the state must be construed in harmony with the fair intent of the constitutional limitation, and that this principle precluded a construction which would permit the State to adopt as its policy the repudiation of debts or the destruction of contracts or the denial of means to enforce them. We held that when the exercise of the reserved power of the State in order to meet public need because of a pressing public disaster, relates to the enforcement of existing contracts, that action must be limited by reasonable conditions appropriate to the emergency. This is but the application of the familiar principle that the relief afforded must have reasonable relation to the legitimate end to which the State is entitled to direct its legislation. Accordingly, in the Blaisdell Case, we sustained the Minnesota mortgage moratorium law in the light of the temporary and conditional relief which the legislation granted. We found that relief to be reasonable, from the standpoint of both mortgagor and mortgagee, and to be limited to the exigency to which the legislation was addressed."

In the light of these cases the majority opinions of the

court below reveal no justification for the destruction of petitioner's contract under the guise of an exercise of the police power.

The problem of reconciling the police power, on the one hand, with the protection undoubtedly intended by the Constitution for the obligation of contracts against impairment through the enactment of a state law is trenchantly touched upon in the quotation made above from the opinion of this Court in Treigle v. Acme Homestead Assoc. The problem is likewise well formulated in Panhandle Eastern Pipe Line Co. v. State Highway Comm., 294 U. S. 613, 621 (1935) (79 L. Ed. 1090, 1096), where Mr. Justice McReynolds, speaking for the court, quotes with approval an opinion of the late Justice Holmes, who, as a rule, was in advance in sustaining the exercise of the police power of the several states, as follows:

> "As long recognized some values are enjoyed under an implied limitation and must yield to the police power. But obviously the implied limitation must have its limits, or the contract and due process clauses are gone. One fact for consideration in determining such limits is the extent of the diminution. When it reaches a certain magnitude, in most, if not in all cases, there must be an exercise of eminent domain and compensation to sustain the act,"

and again, in the same case, Mr. Justice McReynolds, speaking for the majority of the court, said:

> "The police power of a state, while not susceptible of definition with circumstantial precision, must be exercised within a limited ambit and is subordinate to constitutional limitations. It springs from the obligation of the state to protect its citizens and provide for the safety and good order of society. Under it there is no unrestricted authority to accomplish whatever the public may presently desire."

At this point we wish to call the attention of the Court to Hall v. Wisconsin, 103 U. S. 5.

The case of Hall v. Wisconsin, where an engineer's contract was held to be protected against abrogation by the contract clause of the Federal Constitution, is the subject of an illuminating discussion in Long Island Water Supply Co. v. Brooklyn, 166 U. S. 685, 690 (1896), 41 L. Ed. 1165, 1167:

> "Its condemnation is, of course, subject to the rule of just compensation, and that is all that is implied in the decision such as Hall v. Wisconsin, 103 U. S. 5 (26:302), cited by counsel. In that case it appeared that Hall had a contract with the state for service entered into in pursuance of a statute, that he performed the services, but that before finishing his work the Legislature repealed the statute authorizing the contract. It was held that he was nevertheless entitled to his stipulatel compensation. The act of the Legislature in the repeal was not one providing for condemnation, and in so far as it partook of the nature of a condemnation it ignored the obligation of just compensation and was therefore void; but it was not held that, if just compensation had been provided and a public use required, the contract might not have been condemned."

As contributing to the solution of the relative influence of the police power and the contract clause upon issues in this case, as well as affording a striking example of the erroneous interpretation of the police power in cases where the contract clause of the Federal Constitution is involved, we call attention to an Indiana decision reversed by the Supreme Court of the United States. We shall refer first to the Indiana decision and later to the United States Supreme Court decision.

In Grand Trunk W. R. Co. v. South Bend, 174 Ind. 203 (89 N. E. 885, at 887), the Indiana Supreme Court declared:

Indiana decision overruled by U. S. Supreme Court.

"The Legislature, primarily, has control over streets, as well as of other public highways; they are arteries of the State. State ex rel. v. Board, 170 Ind. 595, 609, 85 N. E. 513; Cones v. Board, 137 Ind. 404, 37 N. E. 272. And this governmental power of control cannot be surrendered or contracted away. It is a part of the police power, which cannot be alienated or placed beyond municipal control" (citing cases).

And again the Indiana Supreme Court, at page 889, said:

Indiana decision overruled by U. S. Supreme Court.

"All parties dealing with a sovereign power, or any of its functionaries in the exercise of governmental power, the subject of which pertains to government, do so knowing that it cannot contract away the power conferred for self-protection or self-preservation. The rule, therefore, that the Legislature can pass no law impairing the obligation of contracts does not apply to parties dealing with a department of government concerning the future exercise of powers conferred for public purposes by legislative acts, where the subject matter of the contract is one which affects the safety and welfare of the public" (citing cases).

In accordance with these principles the Supreme Court of Indiana then held that the city ordinance in question was valid.

It may here be noted that the Supreme Court asserted the same plenary power of the state over its highways which this Honorable Court has asserted with reference to the public schools.

However, the Supreme Court of the United States reversed the decision of the Supreme Court of Indiana in the

Grand Trunk W. R. Co. v. South Bend, 227 U. S. 544 (57 Law. Ed. 633), and in rendering its decision Mr. Justice Lamar, speaking for the Court, said (pp. 553-554, Official Report):

> "These, however, are examples of the persistence of the power to regulate, and do not sustain the validity of the repealing ordinance of 1901, since it is not regulative of the use, but destructive of the franchise. In every case like this, involving an inquiry as to whether a law is valid, as an exertion of the police power, or void, as impairing the obligation of a contract, the determination must depend on the nature of the contract and the right of government to make it. The difference between the two classes of cases is that which results from the want of authority to barter away the police power, whose continued existence is essential to the well-being of society, and the undoubted right of government to contract as to some matters, and the want of power, when such contract is made, to destroy or impair its obligation. New Orleans Gaslight Co. v. Louisiana Light & H. P. & Mfg. Co., 115 U. S. 650, 29 L. Ed. 516, 6 Sup. Ct. Rep. 252."

Again, at pages 554 and 555, the Court said:

> "The state, with its plenary control over the streets, had this governmental power to make the grant. There was nothing contrary to public policy in any of its terms, and, being valid and innocuous, the police power could not be invoked to abrogate it as a whole or to impair it in part. Walla Walla v. Walla Walla Water Co., 172 U. S. 17, 45 L. Ed. 348, 19 Sup. Ct. Rep. 77. Tracks laid in a street, under legislative authority, become legalized, and when used in the customary manner cannot be treated as unlawful, either in maintenance or operation. As said by this Court: 'A railway over * * * the streets of the City of Washington may be authorized by Congress, and if,

when used with reasonable care, it produces only that incidental inconvenience which unavoidably follows the additional occupation of the streets by its cars, with the noises and disturbances necessarily attending their use, no one can complain that he is incommoded.' Baltimore & P. R. Co. v. Fifth Baptist Church, 108 U. S. 317, 331, 27 L. Ed. 739, 744, 2 Sup. Ct. Rep. 719. The inconvenience consequent upon the running of a railroad through a city, under state authority, is not a nuisance in law, but is insuperably connected with the exercise of the franchise granted by the state. If the police power could lay hold of such inconveniences, and make them the basis of the right to repeal such an ordinance, the contract could be abrogated because of the very growth in population and business the railroad was intended to secure.

"The power to regulate implies the existence and not the destruction, of the thing to be controlled. And while the city retained the power to regulate the streets and the use of the franchise, it could neither destroy the public use nor impair the private contract, which, as it contemplated permanent, and not temporary, structures, granted a permanent and not a revocable franchise. Both the street and the railroad were arteries of commerce. Both were highways of public utility, and both were laid out subject to the authority of the state, though the power to regulate the use of the streets has been delegated to the municipality. So that, while the company was itself authorized to select the route between the terminal points named in the charter, it could not use streets without the consent of the city through which the line ran. In determining whether they would grant or refuse that consent the municipal authorities were obliged to balance the present and prospective inconveniences of having trains operated through its streets against the advantage of having the railroad accessible to its citizens. It could have refused its consent,

except on terms; it could have forced the road to the outskirts of the town, or could have permitted the company to lay tracks in the more thickly settled parts of the city. When such consent was once given, the condition precedent had been performed, and the street franchise was thereafter held, not from the city, but from the state, which, however, did not confer upon the municipality any authority to withdraw that consent, nor was there any attempt by the council to reserve such power in the ordinance itself."

And, again, at page 556:

"If South Bend can do so, every other municipality having granted like rights, under similar ordinances, and affecting every line of railway in the country, can repeal the franchise to use double or single track. On the ground of congestion of traffic, the state's grant and command to operate a continuous road could be nullified by municipal action, to the destruction of great highways of commerce, similar in their nature to the street itself. Such consequences, though improbable, are rendered impossible by the provision of the Constitution of the United States prohibiting the impairment of the obligation of a contract by legislation of a state, whether acting through a general assembly or a municipality exercising delegated legislative power."

And, again, at page 557:

"Obviously, upon the clearest considerations of law and justice, the grant of arthority to defendant, when accepted and acted upon, became an irrevocable contract, and the city is powerless to set it aside. St. Louis v. Western U. Teleg. Co., 148 U. S. 103, 37 L. Ed. 385, 13 Sup. Ct. Rep. 485."

And, again, at page 558:

"As said in Indianapolis v. Indianapolis Gaslight

> & Coke Co., 66 Ind. 402, such a contract ordinance does not in the least restrict 'the legislative powers of the city, except that, as the sanctity of the contract is shielded by the Constitution of the United States, it cannot, in the exercise of its legislative power, impair its validity; for it would be a solecism to hold that a municipal corporation can impair the validity of a contract, when the state which created the corporation, by its most solemn acts, has no such power.''

Grand Trunk Western Ry. Co. v. South Bend is followed and approved in Owensboro v. Cumberland T. & T. Co. (1912), 230 U. S. 72, 73.

Grand Trunk Railway v. South Bend provides the requisite line of demarcation between the police power and the contract clause, and seems particularly applicable to the citation at hand. It justifies the regulation of the rights of those enjoying public contracts, but it does not justify the striking down of the contract proper simply because the Legislature may conclude that public convenience will at the present time be better accommodated thereby, although the public convenience was better served by the contractual provisions at the time of their making. This seems to be subversive of the only reason advanced in the lower court to uphold the abrogation of petitioner's contract.

It will be noted that the power involved under the Grand Trunk Railway v. South Bend case related to the control of public highways, as to which the State enjoys as large a control as over its schools.

The provisions of the Act of 1927 permit the local school authorities to cancel the contract of a permanent teacher for reasons appertaining to the fitness of the teacher. The specific enumeration of causes for the removal of the teacher does not exhaust the category of reasons therefor,

because in section 2 it is specifically provided that a contract may be canceled for "other good or just cause." As noted in Summary of Argument, V, D, (3) and (4), this clause has been construed liberally in promoting the welfare of the schools. School boards have the power to enact reasonable rules and regulations. The willful violation of these rules and regulations is classified as "insubordination" under section 2 of the act and justifies the cancellation of the contract. Therefore, it seems that the Act of 1927 contains, under the judicial construction accorded to it, adequate means for the preservation of the public interest and a method for terminating the contract where after hearing and notice public interest requires. Should the statute still require amendment in the public interest so as to provide more ample and facile methods of regulating the contract and the conduct of the teacher thereunder, the doctrine of the Grand Trunk Railway Co. case justifies such enactments where regulative but not where destructive of the primary contractual obligation.

It is thus seen that if further educational qualifications, travel, new contacts, periods of study or research, should be required of the teacher a simple means through regulation is available to accomplish such purpose without disturbing the contractual relationship proper. Section 4 of the act already accomplishes this with reference to sickness or physical disability through enforced leave of absence.

This view is further confirmed by the holding in Adams v. Tanner, supra, where this Court held a law of the State of Washington invalid which entirely prohibited private employment agencies, largely on the ground that whatever acknowledged evil inhered therein could be remedied by regulation and the prohibition of the business proper was

unreasonable and, therefore, an unjustifiable exercise of the police power.

While it may be observed that in the Grand Trunk Case the rights involved were represented by physical property as well as by the incorporeal franchise, nevertheless it is not proper to say that the rights of persons in the petitioner's class are less valuable or less sacred under the sanction of the contract clause than are investments of wealth. We call attention to the observation of Mr. Justice Marshall in Sturges v. Crownshield, 4 Wheat. 122, 128, quoted by Chief Justice Hughes in W. B. Worthen v. Thomas, 292 U. S. 426, 431, 432:

> "* * * it is not true that parties have in view only the property in possession, or that its obligation does not extend to future acquisitions. Industry, talents and integrity constitute a fund which is as confidently trusted as property itself. Future acquisitions are therefore liable for contracts; and to release them from this liability impairs their obligation."

However, it is not alone the pecuniary interest of the teacher which is involved here. Through her contractual rights school children are being protected against their teachers being reduced to a "tramp profession" and against interference with their own proper development, through being placed under inexperienced teachers who have succeeded to the position of permanent teachers removed for personal or political reasons. The State chose the instrumentality of a continuing contract in the furtherance of the educational development of children. It cannot without imperiling vaster interests discard the contract as a worthless object without compensation to

those who, relying on the plighted word of the State, have sacrificed other valuable opportunities of employment.

Behind the formal legal issues in this cause great matters are at stake. A noble profession, comprising one million members, who have unselfishly devoted themselves to the instruction of the children of the nation, and, above all, these children also are gravely interested in the outcome. Where there was one Dartmouth College to which, as an alma mater, the great Webster might tearfully turn, there are thousands of public schools which are the only alma mater that the average child knows.

The Indiana Teachers' Tenure Act represents that species of the tenure system which was designed with a contractual base. The merely civil service type of statute, such as the New Jersey statute, does not avail against a change of mind on the part of the State. But collective bargaining and the contractual tenure system remain as alternatives.

If these fail, the profession has no secure protection against the State's own change of mind or against the vexations of politics.

Since January 1, 1937, ten states have passed new tenure laws of varying importance. Of these ten laws three may be placed as continuing contract statutes. This recent legislation is classified and copied in full in "Teacher Tenure Legislation in 1937 to Date," a pamphlet published by Committee on Tenure, National Education Association of the United States, October 1, 1937. Particular attention is called to Act No. 52, of the State of Pennsylvania, approved April 6, 1937, which seems to reveal a contractual tenure system closely related to the Indiana Act here being considered; also to the statute of Wis-

consin held protected against impairment in State ex rel. Nyberg v. Board, 190 Wis. 570.

Respectfully submitted,

FRANKLIN W. PLUMMER,
Wabash, Indiana,
HOWARD E. PLUMMER,
Wabash, Indiana,
CHARLES M. EGGLESTON,
Terre Haute, Indiana,
DENVER HARLAN,
Richmond, Indiana,
PAUL R. SHAFER,
801 Sycamore Bldg.,
Terre Haute, Indiana,
THOMAS F. O'MARA,
315 Grand Bldg.,
Terre Haute, Indiana,
Counsel for Petitioner.

APPENDIX A.

Chapter III, Section 1 and Section 2, page 173, of the Acts of the General Assembly of Indiana of 1899, Burns' Ind. Stat. Ann. 1933, Section 28-4302 and Section 28-4303.

An Act to Provide for Written Contracts Between Teachers and School Corporations.

Section 1. All contracts hereafter made by and between teachers and school corporations of the State of Indiana shall be in writing, signed by the parties to be charged thereby, and no action shall be brought upon any contract not made in conformity to the provisions of this act.

Section 2. For the purpose of carrying this act into effect, the school trustees of the several school corporations of this state shall provide a public record of uniform blank contracts to be carefully worded under the direction of the superintendent of public instruction, and cause such contracts to be signed therein, which record shall be deemed a public record open to inspection by the people of their several school corporations.

APPENDIX B.

Teachers' Contracts Required to Be in Writing.

Chapter 91, Sec. 1, p. 195, of the Acts of General Assembly of Indiana 1921, Burns' Indiana Stat. Ann. 1933, Sec. 28-4304.

An Act Concerning Teachers' Contracts and Providing for the Repeal of Conflicting Laws.

(S. 143. Approved March 7, 1921.)

Section 1. Be it enacted by the general assembly of the State of Indiana, That all contracts hereafter made by and between teachers and school corporations shall be in writing; shall state the date of the beginning of the school term; the number of months in the school term; the total amount of the salary to be paid during the school year; and the number of payments that shall be made during the school year; provided that in this act, a month shall mean not more than twenty school days.

APPENDIX C

Indiana Teachers' Tenure Act 1927—Indiana Acts 1927, Page 259.

An Act defining teachers and permanent teachers, providing for their employment and release, and defining, and providing for the making and cancelling of, indefinite contracts.

(Approved March 8, 1927.)

Section 1. Be it enacted by the general assembly of the State of Indiana, That any person who has served or who shall serve under contract as a teacher in any school corporation in the State of Indiana for five or more successive years, and who shall hereafter enter into a teacher's contract for further service with such corporation, shall thereupon become a permanent teacher of such school corporation. The term "teacher" as used in this section shall mean and include licensed public school teachers, supervisors and principals of all public school corporations, and licensed assistant superintendents and superintendents of school cities and towns. Upon the expiration of any contract between such school corporation and a permanent teacher, such contract shall be deemed to continue in effect for an indefinite period and shall be known as an indefinite contract. Such an indefinite contract shall remain in force unless succeeded by a new contract signed by both parties or unless it shall be cancelled as provided in section 2 of this act: Provided, That teachers' contracts shall provide for the annual determination of the date of the beginning and length of school terms by the school corporation: and, Provided, further, That teachers' contracts may contain provisions for the

fixing of the amount of annual compensation from year to year by a salary schedule adopted by the school corporation and such schedule shall be deemed to be a part of such contract; and, Provided, further, That such schedule may be changed by such school corporation on or before May 1st of any year, such changes to become effective at the beginning of the following school year: Provided, That all teachers affected by such changes shall be furnished with printed copies of such changed schedule within thirty days after its adoption.

Section 2. Any indefinite contract with a permanent teacher as defined in section 1 of this act may be cancelled only in the following manner: Not less than thirty days nor more than forty days before the consideration by any school corporation of the cancellation of any such contract, such teacher shall be notified in writing of the exact date, time when and place where such consideration is to take place; and such teacher shall be furnished a written statement of the reasons for such consideration, within five days after any written request for such statement; and such teacher shall, upon written request for a hearing, filed within fifteen days after the receipt by said teacher of notice of date, time and place of such consideration, be given such a hearing before the school board, in the case of cities and towns, and before the township trustee, in the case of townships; such hearing shall be held not less than five days after such request is filed and such teacher shall be given not less than five days notice of the time and place of such hearing. Such teacher, at the hearing, shall have a right to a full statement of the reasons for the proposed cancellation of such contract, and shall have a right to be heard, to present the testimony of witnesses and other evidence bearing

upon the reasons for the proposed cancellation of such contract. No such contract shall be cancelled until the date set for consideration of the cancellation of such contract; nor until after a hearing is held, if such hearing is requested by said teacher; nor until, in the case of teachers, supervisors, and principals, the city or town superintendents, in cities and towns, and the county superintendents, in townships and in cities and towns not having superintendents, shall have given the school corporation his recommendations thereon, and it shall be the duty of such superintendent to present such recommendations upon five days' written notice to him by such school corporation. Nothing contained in this section shall prevent the suspension from duty of any teacher pending a decision on the cancellation of such teacher's contract. Cancellation of an indefinite contract of a permanent teacher may be made for incompetency, insubordination (which shall be deemed to mean wilful refusal to obey the school laws of this state or reasonable rules prescribed for the government of the public schools of such corporation), neglect of duty, immorality, justifiable decrease in the number of teaching positions or other good and just cause, but may not be made for political or personal reasons: Provided, That when the cause of cancellation of an indefinite contract is immorality or insubordination, as defined in this act, such cancellation shall go into effect at once: and, Provided, further, That when the cause of cancellation of an indefinite contract is not immorality or insubordination, as defined in this act, such cancellation shall go into effect at the end of the school term following such cancellation. The school board of any city or town, by a majority vote, evidenced by a signed statement in the minutes of the board, or the township trustee, by a written and signed statement recorded in his records, may can-

cel an indefinite contract with a teacher after compliance with the provisions of this section: Provided, That the decision of the school board shall be final: and, Provided, further, That the decision of the township trustee shall not become effective for ten days, during which time an appeal may be taken to the county superintendent, in which case the county sueprintendent shall investigate the case and make a final decision within five days.

Section 3. No teacher shall be appointed by any school corporation in Indiana, and no teacher shall become a permanent teacher in any such school corporation, until the superintendent, in the case of school cities and school towns, and the county superintendent, in the case of townships and school cities and towns not having superintendents, shall have made a report upon such teacher's preparation, experience, and license, and it shall be the duty of every such superintendent. within ten days after request, to make such report upon any person whom the school corporation is considering as an applicant: Provided, That nothing contained in this section shall be deemed to prevent the granting to any superintendent of additional authority in the selection and employment of teachers either by law or by the rules or regulations of any school corporation.

Section 4. No permanent teacher shall be permitted to cancel his indefinite contract during the school term for which his said contract is in effect nor for a period of thirty (30) days previous to the beginning of such school term unless such cancellation is mutually agreed upon; such permanent teacher shall be permitted to cancel his indefinite contract at any other time by giving a five days' notice to the school corporation. Any permanent teacher cancelling his indefinite contract in any other manner than

in this section provided shall be deemed guilty of unprofessional conduct and the state superintendent is hereby authorized to suspend the license of such teacher for a period of not exceeding one year.

Section 5. Any school corporation, upon written request, may grant leaves of absence, for periods not exceeding one year, to any permanent teacher for study or professional improvement or because of physical disability or sickness, subject to such rules and regulations governing leave of absence as may be adopted by such corporation: Provided, That without written request any school corporation may place a permanent teacher on leave of absence for periods of not exceeding one year because of physical or other disability or sickness: Provided, That such teacher shall have a right to a hearing on such unrequested leave of absence in accordance with the provisions for hearings contained in section 2 of this act.

Section 6. This act shall be construed as supplementary to an act of the general assembly, page 195, acts 1921, entitled, "An act concerning teachers' contracts and providing for the repeal of conflicting laws."

APPENDIX D.

Indiana Teachers' Tenure Act 1933—Indiana Acts 1933, p. 716.

(Bold-face type—additions to 1927 act. Small Type in brackets—deletions from 1927 act.)

Teachers—Amendment—When to Become Permanent—Contracts — School Terms — Compensation — Salary Schedule—Uniformity of Contracts.

Section 1. Be it enacted by the general assembly of the State of Indiana, That section 1 of the above entitled act be amended to read as follows: Section 1. That any person who has served or who shall serve under contract as a teacher in any **(school city corporation or in any school town corporation)** in the State of Indiana for five or more consecutive years, and who shall at any time hereafter enter into a teacher's contract for further service with such corporation, shall thereupon become a permanent teacher of such school corporation. The term "teacher" as used in this section shall mean and include licensed public school teachers, supervisors and principals of all such public school corporations, and licensed assistant superintendents, and superintendents of such school corporations. Upon the expiration of any contract between such school corporation and a permanent teacher, such contract shall be deemed to continue in effect for an indefinite period and shall be known as an indefinite contract. Such an indefinite contract shall remain in force until such permanent teacher shall have reached the age of sixty-six years unless succeeded by a new contract signed by both parties or unless it shall be cancelled as provided in section 2 of this act; Provided, That teachers'

contracts shall provide for the annual determination of the date of beginning and length of school terms by the school corporation; and, Provided further, That teachers' contracts may contain provisions for the fixing of the amount of annual compensation from year to year by a salary schedule adopted by the school corporation and such schedule shall be deemed to be a part of such contract; Provided further, That such schedule may be changed by such school corporation on or before May first of any year, such changes to become effective at the beginning of the following school year; Provided, That all teachers affected by such changes shall be furnished with printed copies of such changed schedule within thirty days after its adoption; **(and, Provided further, That teachers [']** contracts shall be uniform and of the form and wording as prescribed by the state superintendent of public instruction.)

Teachers—Indefinite Contract—Amendment—Cancellation—Time and Place of Hearing—Notice to Teacher—Statement of Reasons—Suspension of Teacher—Grounds for Cancellation—Board—Decision—Final.

Sec. 2. That section 2 of the above entitled act be amended to read as follows: Sec. 2. Any indefinite contract with a permanent teacher as defined in section 1 of this act may be cancelled only in the following manner: Not less than thirty days or more than forty days before the consideration by any such school corporation of the cancellation of any such contract, such teacher shall be notified in writing of the exact date, time when and place where such consideration is to take place; and such teacher shall be furnished a written statement of the reasons for such consideration within five days after any written re-

quest for such statement; and such teacher shall, upon written request for a hearing, filed within fifteen days after the receipts by said teacher of notice of date, time and place of such consideration, be given such a hearing before the school board (In the case of cities and towns, and before the township trustee, in the case of Townships;) of such school corporation; such hearing shall be held not less than five days after such request is filed and such teacher shall be given not less than five days' notice of the time and place of hearing. Such teacher, at the hearing shall have a right to a full statement of the reasons for the proposed cancellation of such contract, and shall have a right to be heard, to present the testimony witnesses and other evidence bearing upon reasons for the proposed cancellation of such contract. No such contract shall be cancelled until the date set for consideration of the cancellation of such contract; nor until after a hearing is held, if such hearing is requested by said teacher; nor until, in the case of teachers, supervisors, and principals, the city or town superintendent shall have given the school corporation his recommendations thereon, and it shall be the duty of such superintendent to present such recommendations upon five days' written notice to him by such school corporation. Nothing contained in this section shall prevent the suspension from duty of any teacher pending a decision on the cancellation of such teacher's contract. Cancellation of an indefinite contract of a permanent teacher may be made for incompetency, insubordination (which shall be deemed to mean a wilful refusal to obey the school laws of this state or reasonable rules prescribed for the government of the public schools of such corporation), neglect of duty, immorality, justifiable decrease in the number of teaching positions or other good and just cause but may not be made for political or personal reasons;

Provided, That when the cause of cancellation of an indefinite contract is immorality or insubordination, as defined in this act, such cancellation shall go into effect at once; and, Provided further, That when the cause of cancellation of an indefinite contract is not immorality or insubordination, as defined in this act, such cancellation shall go into effect at the end of the school term following such cancellation. The school board of any such school corporation, by a majority vote, evidenced by a signed statement in the minutes of the board, may cancel an indefinite contract with a teacher after compliance with the provisions of this section; Provided, That the decision of the school board shall be final.

Teachers—Condition Precedent to Appointment and/or Making Permanent—Amendment—Superintendent—Statement—Contents—Proviso—Act Construed.

Sec. 3. That section 3 of the above entitled act be amended to read as follows: Sec. 3. No teacher shall be appointed by any such school corporation in Indiana, and no teacher shall become a permanent teacher in any such school corporation, until the school superintendent shall have made a report upon such teacher's preparation, experience, and license, and it shall be the duty of every such superintendent, within ten days after request, to make such report upon any person whom the school corporation is considering as an applicant; Provided, That nothing contained in this section shall be deemed to prevent the granting to any superintendent of additional authority in the selection and employment of teachers either by law or by the rules or regulations of any such school corporation.

Leaves of Absence—Periods of—Reasons for—Amendment—School Corporation—Proviso—Right to Hearing.

Sec. 4. That section 5 of the above entitled act be amended to read as follows: Sec. 5. Any such school corporation, upon written request, may grant leave of absence, for periods not exceeding one year, to any permanent teacher for study of professional improvement or because of physical disability or sickness, subject to such rules and regulations governing leave of absence as may be adopted by such corporation; Provided, That without written request any such school corporation may place a permanent teacher on leave of absence for periods of not exceeding one year because of physical or other disability or sickness; Provided, That such teacher shall have a right to a hearing on such unrequested leave of absence in accordance with the provisions for hearings contained in section 2 of this act.

Amendment—Act Construed.

Sec. 5. That section 6 of the above entitled act be amended to read as follows: Sec. 6. This act shall be construed as supplementary to an act of the general assembly, page 195, Acts 1921, entitled "An act concerning teachers' contracts and providing for the repeal of conflicting laws."

APPENDIX E.

Teachers' Minimum Wage Act.

Chapter 56, Acts of 1920, Special Session, p. 194 (Burns' Ind. Stats. Ann. 1933, Section 28-4314).

An Act to amend an act to amend section 1 of an act entitled, "An act to amend an act entitled 'an act to amend section 1 of an act entitled an act to classify and regulate the minimum wage of teachers in public schools,' approved March 2, 1907, approved March 1, 1911, and to amend section 2 of an act entitled 'an act to classify and regulate the minimum wages of teachers in public schools,' approved February 28, 1913, approved March 15, 1919."

(H. B. 553. Approved August 4, 1920.)

Section 1. Be it enacted by the general assembly of the State of Indiana, That section 1 of the above entitled act be amended to read as follows: Section 1. That the daily wages of teachers for teaching in the public schools of the state shall not be less in the case of beginning teachers, than an amount determined by multiplying four and one-fourth cents by the general average given such teacher on his highest grade of license at the time of contracting. For teachers having had a successful experience for one school year of not less than six months, the daily wages shall be not less than an amount determined by multiplying four and three-fourths cents by the general average given such teacher on his highest grade of license at the time of contracting. For teachers having had a successful experience of three or more school years of not less than six months each, the daily wages shall not be less

than an amount determined by multiplying five and one-half cents by the general average given such teacher on his highest grade of license at the time of contracting. For teachers having had a successful experience of five or more school years of not less than six months each, the daily wages shall be not less than an amount determined by multiplying six cents by the general average given such teacher on his highest grade of license at the time of contracting. All teachers now exempt from examination shall be paid, as daily wages for teaching in the public schools, not less than an amount determined by multiplying six and one-half cents by the general average of scholarship and success given such teacher: Provided, That the grade of scholarship accounted in each case be that given at the teacher's last examination, and that the grade of success accounted, be that of the teacher's term last preceding the date of contract: And Provided further, That two per cent shall be added to the teacher's general average scholarship and success for attending the county institute the full number of days, and that said two per cent shall be added to the average scholarship of beginning teachers: Provided further, That the minimum paid to any teacher in the common schools of this state shall not be less than $800 per school year.

APPENDIX F.

The New Jersey Act (as Quoted in Phelps v. Board of Education of Town of West New York, 57 Sup. Ct. Rep. 483).

Section 1 (4 N. J. Com. St. 1910). The service of all teachers, principals, supervising principals of the public schools in any school district of this state shall be during good behavior and efficiency, after the expiration of a period of employment of three consecutive years in that district, unless a shorter period is fixed by the employing board; . . . No principal or teacher shall be dismissed or subjected to reduction of salary in said school district except for inefficiency, incapacity, conduct unbecoming a teacher or other just cause, and after a written charge of the cause or causes shall have been preferred against him or her . . . and after the charge shall have been examined into and found true in fact by said Board of Education, upon reasonable notice to the person charged, who may be represented by counsel at the hearing . . .

APPENDIX G.

BIBLIOGRAPHY OF TENURE AND CONTRACTUAL STATUS OF TEACHERS.

I. Publications of the National Education Association.

A. Committee on Tenure.

The reports of the Committee on Salaries, Tenure, and Pensions, appointed by the National Education Association in 1911, appear in the **Proceedings** of the Association for the years 1918 thru 1922. In 1923, this Committee was reorganized into three committees, a separate Committee on Tenure being appointed. Since that time the report of the Tenure Committee has been published annually in the **Proceedings**, in part or in full, with the exception of the years 1932 and 1933. No report was made by the Committee in 1933.

1. Rowland, Albert Lindsay, chairman. **Report of the Committee of One Hundred on Tenure Problems.** 1930. Same: **Proceedings, 1930.** p. 195-97.

   Lists twelve principles of tenure legislation. Cites current studies.

2. Rowland, Albert Lindsay, chairman. **Report of the Committee of One Hundred on Tenure Problems.** 1931. 8 p. Same: **Proceedings, 1931.** p. 264-70.

   Presents abstract of R. W. Homstedt's study of the operation of the New Jersey tenure law.

3. Tall, Lida Lee, chairman. **Report of the Committee of One Hundred on Tenure Problems.** 1932. 18 p. (Mimeo.)

   A study of laws governing the duration of teachers'

contracts. Based on information obtained from school codes, reports, and letters from state and city school officials.

4. DuShane, Donald, chairman. **Report of the Committee on Civil Service for Teachers.** 1934. 42 p. (Mimeo.) Out of print. Excerpts: **Proceedings, 1934.** p. 172-78. Also: **Journal of the National Education Association** 23: 194; November 1934.

   Reports the results of an inquiry among city school superintendents of Indiana. Summarizes the leading tenure cases in nine states.

5. DuShane, Donald, chairman. **Recent Court Decisions on Teacher Tenure.** 1935. 61 p.

   A digest of court decisions concerning teacher tenure which have been rendered in 69 cases during 1932, 1933, and 1934.

6. DuShane, Donald, chairman. "Report of Committee on Tenure." **Proceedings, 1935.** p. 221-24.

   Reviews the extent and need of tenure and summarizes the work of the Committee.

7. DuShane, Donald, chairman. **Teacher Tenure Legislation in 1935 to Date.** July 1935. 38 p.

   Includes a state-by-state survey and the text of tenure bills considered in nine states.

8. DuShane, Donald, chairman. **Court Decisions on Teacher Tenure in 1935.** 1936. 47 p.

   A digest of court decisions concerning teacher tenure

during 1935. Brings uptodate the report listed as item A-5.

9. DuShane, Donald, chairman. **Handbook on Teacher Tenure.** (Preliminary edition.) 1936. 32 p. Printed in final form as the September 1936 **Research Bulletin** (item H-32).

Brings uptodate the material presented in the 1932 tenure report, listed as item A-3.

10. DuShane, Donald, chairman. **1936 Report of the Tenure Committee.** 1936. 14 p. (Mimeo.) Gratis. Abstracts: "Tenure for the Profession." **Journal of the National Education Association** 25: 240; November 1936.

Suggests procedures in tenure campaigns. Discusses teachers' contracts; minimum-salary, retirement, and tenure laws; the superintendent and tenure; and investigations with regard to the dismissal of teachers and superintendents.

11. DuShane, Donald, chairman. **Teachers' Contracts: With Special Reference to Adverse Conditions of Employment.** 1936. 31 p.

A study of several hundred contract forms which reveals the multiplicity of items in contracts, and the discriminatory nature of certain prescriptions imposed upon teachers.

12. DuShane, Donald, chairman. **Court Decisions on Teacher Tenure Reported in 1936.** April 1937. 35 p.

Reviews court decisions on tenure for the calendar year 1936. Brings uptodate two previous reports on court decisions (items A-5 and A-8).

13. DuShane, Donald, chairman. **Mandatory State-Adopted Contract Forms.** June 1937. 31 p.

Presents data indicating that the practise of state-wide uniform contracts has much to recommend it. State contracts omit many adverse conditions of employment reported in the publication, **Teachers' Contracts: With Special Reference to Adverse Conditions of Employment** (reference A-11).

14. DuShane, Donald, chairman. **Minimum-Salary Laws for Teachers.** January 1937. 38 p.

Includes statement in foreword that through uniform contracts and minimum-salary laws the state can prevent many adverse and unreasonable working conditions. Describes the laws and regulations on minimum salaries in the 20 states having specific minimum-salary standards for teachers, and presents facts on the operation of such laws.

15. DuShane, Donald, chairman. **Report of Committee on Tenure.** 1937. 18 p.

Outlines the work and purpose of the tenure committee. Discusses tenure legislation and case investigations of discharged teachers.

B. Department of Classroom Teachers.

16. **The Economic Welfare of Teachers.** Sixth Yearbook, 1931. Chapter 3, "Employment during Efficiency," p. 39-46.

Shows that teachers may assure themselves tenure either through (1) legislation and rules, or (2) contractual provisions. Twelve principles of tenure leg-

islation are stated. Advantages and disadvantages of various types of tenure laws are discussed. Urges that tenure regulations should protect not only the teaching profession but also the educational rights of children.

C. Department of Superintendence (now the American Association of School Administrators).

17. **The Status of the Superintendent.** First Yearbook, 1923. Chapter 7, "The Tenure of Office of the Superintendent of Schools," p. 110-22.

A study of tenure conditions among city school superintendents. Presents data on range in tenure of office, length of terms and length of contracts. Submits recommendations as to bases of selection, term of employment, and conditions which should govern the superintendents' recall and release.

18. **Educational Leadership: Progress and Possibilities.** Eleventh Yearbook, 1933. p. 111-21, 197-205.

Includes information concerning contractual status and tenure of city and rural superintendents of schools.

D. Division of Teacher Welfare.

19. **Teacher Tenure.** 1937. 4 p.

Discusses some of the advantages of tenure.

E. Journal of the National Education Association.

20. Committee on Tenure. "Tenure for the Profession." Vol. 25: 240; November 1936.

Abstracts from the 1936 Report of the Tenure Com-

mittee (item A-10), concerning tenure campaigns; minimum-salary, retirement, and tenure laws; and the superintendent and tenure.

21. DuShane, Donald. "Need for Tenure." Vol. 25: 42; February 1936.

A brief discussion of the advantages of tenure and a plea that teachers support education associations in their efforts to secure tenure.

22. DuShane, Donald. "Superintendent and Tenure." Vol. 24: 156; May 1935.

A general discussion of the problems of tenure with brief comment on the trend toward including superintendents under tenure.

23. Givens, Willard E. "Teacher Welfare to the Front." Vol. 25: 202; October 1936.

Includes a brief section on tenure giving reasons for sound tenure legislation and a chart showing proportion of teachers under various types of state tenure laws.

24. Goldberg, Stella. "Tenure As It Affects the Child." Vol. 24: 279; December 1935.

Discusses the effect of tenure or the lack of tenure upon the mental and physical health of the teacher, with its resultant effect upon the teacher's pupils.

25. Hunter, Fred M. "Tenure for Teachers." Col. 14: 271-75; December 1925.

Favors principle of indefinite tenure and commends law operating in New Jersey. Contrasts the influence

of "hire and fire system" existing so widely in the United States with the security enjoyed by teachers in European countries.

26. Lively, Emery C. "How Louisiana Secured Tenure." Vol. 25: 281-82; December 1936.

Describes efforts to secure tenure in Louisiana since 1931. Gives 14 important factors in enacting the tenure bill now effective in that state.

F. Legislative Commission.

27. **Teaching—Procession or Profession?** 1934. 8 p.

Includes twelve principles to be considered in the framing and operation of tenure plans and gives seven reasons why teacher tenure contributes to school efficiency.

G. Proceedings of the National Education Association

28. Avery, George T., chairman. "Report of Committee on Resolutions." **Proceedings, 1935.** p. 207-16.

29. Kelley, J. Herbert. "Should the Profession thru the National Education Association Provide for the Protection of Teachers and Administrators Who Are Unjustly Treated?" **Proceedings, 1935.** p. 237-38.

Enumerates ways in which the Association might assist teachers and protect its members.

30. Mallory, Gertrude; Frank, Kate; Smith, Esther M.; and Blanchard, H. H. "Teacher Tenure." **Proceedings, 1934**, p. 318-19, 321-25, 327-29.

Four addresses on the California tenure law, attitude of teachers, value of continuous employment, and the Indiana situation.

H. Research Division.

31. "Administrative Practises Affecting Classroom Teachers. Part 2. The Retention, Promotion, and Improvement of Teachers." **Research Bulletin** 10: 33-76; March 1932. "The Term of Employment for Teachers," p. 36-38.

Topics treated are: types of laws and regulations governing duration of teachers' contracts, present practise in city school systems, general principles for establishment of contractual relations, and the use of formal contracts.

32. "A Handbook on Teacher Tenure." **Research Bulletin** 14: 167-94; September 1936.

A study of laws governing the duration of teachers' contracts. Brings uptodate the material presented in the 1932 **Report of the Committee on One Hundred on Tenure Problems** (item A-3).

33. "The Problem of Teacher Tenure." **Research Bulletin** 2: 138-75; November 1924. (Out of print.)

A reprint of the 1924 Report of the Committee of One Hundred on the Problem of Tenure (Fred M. Hunter, chairman), together with additional material on the subject.

34. "A Self-Survey Plan for State School Systems. Part I: Checklists. Part II: Handbook." **Research Bulletin** 8: 67, 81-82, March 1930; 120-24, May 1930.

Sets up ten criteria for judging state administration of teacher employment and contracts, and applies the checklist to Pennsylvania.

35. **State-Adopted Contract Forms for the Employment of Teachers.** June 1936. 19 p. (Mimeo.)

Study of 400 current contract forms used by local school systems and education associations.

36. "Teacher Tenure: An Outline for Study Groups." **Secondary Education** 5: 197-99; September 1936. Washington, D. C.: Department of Secondary Education, National Education Association.

Includes a discussion of the legal status of tenure. Gives 12 basic principles with respect to teacher tenure.

I. Review of Educational Research.

37. Anderson, Earl W. "The Legal Status of the Teacher." Vol. 1: 115-17; 154-55; April 1931.

Reviews briefly studies dealing with legal phases of teacher status, among them employment and causes for dismissal.

38. Butsch, Russell L. C. "Teacher Tenure." Vol. 1: 118-21; 155-56; April 1931.

Reviews studies of teacher turnover, with respect to its causes, extent, and the influence of tenure legislation.

39. Butsch, Russell L. C. "Tenure of Teachers." Vol. 7: 292-95, 345-46; June 1937.

Review of literature for 1934, 1935, and 1936 on teacher turnover and on tenure laws.

40. Edwards, Newton. "The Legal Status of Teachers." Vol. 3: 421-27; 460-62; December 1933.

Reviews briefly studies of teacher status, including those relating to contracts.

41. Elsbree, Willard S. "Tenure of Teachers." Vol. 4: 316-18; 349-51; June 1934.

Reviews studies of tenure laws, teacher turnover, and length of teaching experience.

II. Publications Other Than Those of the National Education Association.

42. Allen, Ira M. **The Teacher's Contractual Status as Revealed by an Analysis of American Court Decisions.** Contributions to Education, No. 304. New York: Teachers College, Columbia University, 1928. p. 77-79.

States that the principle guiding the dismissal of teachers employed under tenure acts is that they may be removed for cause and in manner prescribed by statute. Reviews certain cases which have arisen, one of which raises problem of distinguishing between dismissal and failure to reemploy.

43. Almack, J. C., and Lang, A. R. **Problems of the Teaching Profession.** Boston: Houghton Mifflin Co., 1925. Chapter 12, "The Teacher's Tenure of Position," p. 215-34.

Briefly reviews the brief and insecure tenure of teachers and its consequences. Considers causes and remedies, and sets forth principles of sound tenure legislation.

44. Anderson, Earl W. **The Teacher's Contract and Other Legal Phases of Teacher Status.** Contributions to Education, No. 246. New York: Teachers College, Columbia University, 1927. 180 p.

An analysis of contract forms, local rules and regulations and state laws and legal decisions to discover legal restrictions placed upon the teacher. Tenure provisions included in contracts, legislation relating to teacher tenure since 1905, and the optimum legal status of the teacher with regard to dismissal and tenure are dealt with in p. 49, p. 128-29, and p. 138-41, respectively.

45. Baldwin, Robert D. "Professional Tenure for Teachers." **American School Board Journal** 94: 43-45; February 1937.

Discusses tenure under the following headings: "Tenure a Two-Way Proposition," "Retaining the Position during Satisfactory Service," "Absurdities in Tenure Legislation," "Professional Tenure Desirable," "Conditions Conducive to Uncertain Tenure," and "The Continuing Contract."

46. Betts, Gilbert L. "The Influence of Teacher Tenure Laws on Supply and Demand." **Journal of Educational Research** 28: 118-31, 175-86; October and November 1934.

The replies of elementary teachers to an inquiry sent out by the National Survey of the Education of Teachers comprise the raw data for this study.

47. Burke, Arvid J. **Understanding Teacher Tenure.** Public Information Service, Circular No. 3. Albany, N. Y.: New York State Teachers Association (152 Washington Ave.), 1936. 5 p. (Mimeo.) Supplement: **Why Tenure for Public School Teachers.** 1937 4 p. (Mimeo.)

A series of questions and answers regarding teacher tenure, some of which relate specifically to New York State.

48. California Teachers' Association, Tenure Committee. "California Teacher Tenure." **Sierra Educational News** 28: 17-21; September 1932.

Reports an investigation of the teacher tenure problem in California. Includes results of a questionnaire sent to boards of trustees and of a questionnaire sent to 1400 classroom teachers. Also gives recommendations from several groups of trustees, administrators, and from some tenure committees.

49. Chambers, Merritt M. "Taking Tenure to Court." **Nation's Schools** 17: 31-32; May 1936.

Reviews certain recent tenure cases. Says that in view of the division of judicial opinion exhibited, it seems that further statutory revision and administrative experience will be necessary before the actual effect of tenure laws in commonly disputed cases can be forecast with much certainty.

50. Clarke, Clarence L. **Tenure of Teachers in the Profession with Special Reference to Wisconsin.** Ann Arbor, Mich.: Annual Press, University of Michigan, 1928. 144 p.

Develops an index of mean tenure of Wisconsin

teachers and seeks to determine the relation of length of service to other characteristics of the teaching personnel, such as training and position held. Reviews previous studies. Urges wider use and further refinement of teacher accounting methods.

51. Cooke, Dennis H. **Problems of the Teaching Personnel.** New York: Longmans, Green and Co., 1933. Chapter 6, "Turnover and Tenure of Teachers," p. 77-95.

General discussion of significance of problem, causes of short tenure, and status of teacher tenure legislation.

52. Couch, Edward B. "Tenure Laws in California." **Nation's Schools** 17: 21; January 1936.

Reviews the changes made in rewriting the California tenure law in 1935. The entire emphasis was placed upon the welfare of the child. leaving the protection afforded the eacher entirely incidental.

53. Cubberly, Ellwood P. **State School Administration.** Boston: Houghton Mifflin Co., 1927. "Appointment and Tenure," p. 642-51.

Describes conditions in American school systems which are responsible for the annual election plan of employing teachers. Gives arguments for and against life tenure, and advocates probationary employment followed by indefinite tenure. Outlines sound state plan for teacher tenure.

54. Dorsey, Susan M., chairman. **Report of the California Commission for the Study of Educational Problems.** Sacramento, Calif.: State Printing Office, 1931. Vol. 1, p. 86-92; Vol. 2, p. 57-59.

Discusses results attributed to the present California

teacher tenure law by laymen, school officials, and teachers. Recommends changes.

55. Edwards, Newton. **The Courts and the Public Schools.** Chicago: University of Chicago Press, 1933. Chapters 14 and 15, p. 402-68.

Reviews court decisions and generally recognized legal principles.

56. Elder, Arthur. "Attacks on Tenure in Michigan." **American Teacher** 21: 13-15; September 1936.

Reviews certain tenure cases in Michigan. Concludes that although the qualities of competence should be a teacher's best safeguard of tenure, in view of the increasing frequency of dismissal for reasons absolutely unconnected with their competence, some form of legal protection is necessary.

57. Engelhardt, Fred. **Public School Organization and Administration.** Boston: Ginn and Co., 1931. p. 176-78, 189-98.

Pages 176-78 present a brief discussion of certain phases of teachers contracts. Pages 189-98 include suggestions as to guiding principles for tenure legislation and point out that tenure laws may never be made to apply to teachers employed in small school districts, who undoubtedly need such protection. Discusses tenure provisions, permanence of teachers, and turnover in the teaching profession.

58. Garber, Lee O. "The Law Governing the Dismissal of Teachers on Permanent Tenure." **Elementary School Journal** 35: 115-22; October 1934.

Notes how teachers who have been placed on permanent tenure may be legally dismissed.

59. Garber, Lee O. "When and How Do Teachers Attain a Permanent Status under Tenure Laws?" **American School Board Journal** 91: 15-16; July 1935.

Discusses the problem of permanent tenure under three heads: (1) when does a probationary teacher become a permanent one? (2) who may achieve tenure? and (3) can a schoolboard legally transfer a permanent teacher from one position to another?

60. Graves, Frank P. **The Administration of American Education.** New York: Macmillan Co., 1932. Chapter 11, "Turnover and Tenure," p. 212-23.

Tells when and how dismissals should be made and describes advantages and disadvantages of permanent tenure. Recommends the teacher's right of appeal to the chief state school officer and a specification of charges in the law.

61. Hodgdon, Daniel R. "Teachers' Tenure." **Yearbook of School Law, 1937.** (Edited by M. M. Chambers.) Washington, D. C.: American Council on Education, 1937. p. 30-44.

Reviews court decisions on tenure. Similar reviews have been included in the **Yearbook of School Law** since it was first issued in 1933.

62. Holmstedt, Raleigh W. **A Study of the Effects of the Teacher Tenure Law in New Jersey.** Contributions to Education, No. 526. New York: Teachers College, Columbia University, 1932. 111 p.

A study of the effects of the New Jersey teacher tenure law on the stability of the teaching staff, the professional improvement of teachers, and procedures of

personnel administration. As a check upon the findings for New Jersey, an analysis was made of conditions in the state of Connecticut where no tenure law exists, and yet where other factors (history, population, industrial developments, educational leadership, etc.) are closely comparable.

63. Kandel, Isaac L. "Tenure of Service of Teachers." **Teachers College Record** 26: 127-44; 197-204; October and November 1924.

Declares that the problem of tenure turns, not on the rights of teachers, but on the question of how to secure competent service in the schools. Discusses attitude of courts.

64. Lewis, E. E. **Personnel Problems of the Teaching Staff.** New York: Century Co., 1925. Chapters 16 and 17, p. 328-62.

Defines turnover in terms of replacements and discusses its causes and the need for more accurate statistical information as to its extent. Surveys methods used in measuring tenure, and sets forth principles to be considered in formulating state laws and local regulations. Lists arguments for and against long tenure.

65. Lund, John. "Administrator Looks at the Schools and Democracy; a Reply to Myers' 'Will Education go Democratic?'" **Clearing House** 11: 479-82; April 1937. (See reference No. 67.)

In answering Dr. Myers' proposal regarding appointments, promotions, and dismissals, says that this responsibility could not be delegated to an elected staff committee without a revolutionary change in the fun-

damental and traditional concept of the source of control in American education.

66. Murphy, Asael B. "What Shall We Do With Teacher Tenure?" **American School Board Journal** 90: 14; April 1935.

Contends that legislation is not a solution. Advocates indefinite tenure.

67. Myers, Alonzo F. "Will Education Go Democratic?" **Clearing House** 11: 263-67; January 1937. Excerpts: **Education Digest** 2: 15-17; March 1937. (See reference No. 65.)

Proposes among other things, that all professional appointments, promotions, and dismissals should be made upon recommendation of a personnel committee made up of staff members elected by the teaching staff (assuming that there is an expert, professionally-minded teaching staff).

68. Newlon, Jesse H. "Security for School Administrators." **School Executive** 56: 11-13; September 1936.

Discusses various aspects of security for administrators. Says that this is a critical problem that needs to be squarely faced.

69. Peterson, A. G. "Turnover of Rural Teachers." **Educational Administration and Supervision** 16: 659-67; December 1930.

A summary of conditions and factors relating to tenure of rural teachers in various sections of the United States during the past decade.

70. Scott, Cecil W. **Indefinite Teacher Tenure.** Contributions to Education, No. 613. New York: Teachers College, Columbia University. 1934. 165 p. Abstract: **Teachers College Record** 36: 22-23; January 1935.

Develops guiding principles for indefinite tenure. Studies the provisions of tenure laws and their operation, and also the problem of tenure in six European countries.

71. Seyfried, J. E. **Contractual Status of California City School Superintendents.** Publications in Education, Vol. 7, No. 2. Berkeley, Calif.: University of California, 1933. 82 p.

Concluded that large majority of superintendents have practically no professional status than can be legally enforced.

72. Seyfried, J. E. **Employment Contracts of City School Superintendents.** University of New Mexico Bulletin, Education Series, Vol. 8, No. 2. Albuquerque, N. Mex.: University of New Mexico Press, 1934. 60 p.

This study discusses the law of contracts, legal principles pertaining to contracts of city school superintendents, and contract forms.

73. Simon, Donald L. "Opposed to a Teacher-Tenure Law." **Nation's Schools** 17: 22; June 1936.

During a recent investigation, it was found that county and town superintendents in Indiana were opposed to teacher-tenure legislation. Offers two suggestions as to how this opposition might be overcome.

74. Stevenson, Fred G. "Legal Aspects of Teachers' Contracts." **American School Board Journal** 81: 60, 128; November 1930.

Thirty-five states require written teachers' contracts with some or all schoolboards. Statutory requirements as to stipulations in the contract vary. Most common stipulations are as to the salary and term.

75. "Tenure Can Be Won." **American Teacher** 21: 4; November 1936.

Says that a united campaign for tenure supported by all teachers' organizations by progressive citizens' groups, and by labor has a good chance for success.

76. Trusler, H. L. **Essentials of School Law.** Milwaukee, Wis.: Bruce Publishing Co., 1927. p. 194-216.

Statutory provisions and legal principles governing rights of boards of education to dismiss teachers, causes for dismissal, procedure to be observed in dismissing teachers, and damages for wrongful dismissal are dealt with in the pages cited.

77. Voorhees, Harvey C. **The Law of the Public School System of the United States.** Boston: Little, Brown and Co., 1916. Sections 64 and 69, p. 143-50, 159-66.

Cites court decisions under the headings "Contract of Employment," and "Discharge, Removal, and Suspension."

78. Wittke, Carl, chairman. "Academic Freedom and Tenure." Report of Committee A at the annual meeting December 29, 1936. **Bulletin of the American Associa-**

tion of University Professors 23: 103-108; February 1937.

Summarizes work of the Committee since 1932 and makes suggestions for future activities.

79. Zeliff, L. A. "How the Superintendent May Make His Tenure Permanent." **American School Board Journal** 93: 20-21; October 1936.

Says that the man who wants to hold his job can do so by practising some of the fundamental principles of successful administration and human behavior.